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## Title 32—NATIONAL DEFENSE

### Chapter I—Office of the Secretary of Defense

#### SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATION

[Amdt. 46]

### PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGU- LATION

#### Defense Contract Financing

The following section in the form of a cross-reference is added to Part 30:

#### § 30.5 Appendix E; Defense Contract Financing Regulations.

The regulations with respect to Defense Contract Financing Regulations are contained in Part 82, Subchapter G, of this chapter.<sup>1</sup>

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Office of Assistant Secretary  
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Logistics).*

OCTOBER 20, 1959.

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#### SUBCHAPTER G—DEFENSE CONTRACT FINANCING

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AUTHORITY: §§ 82.1 to 82.97 issued under R. S. 161, sec. 2202, 70 Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply sec. 301, 702(d), 64 Stat. 800, 816, as amended, secs. 2307, 7364, 70A Stat. 131, 455, as amended, sec. 1, 72 Stat. 972; 50 U.S.C. App. 2091, 2152(d), 10 U.S.C. 2307, 7364, 50 U.S.C. 1431, E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp., E.O. 10789, 23 F.R. 8897.

## § 82.1 Scope; financing defined.

This part covers the financing of contracts and subcontracts for the national defense. It is applicable to contract financing for all types of contracts for all kinds of work, supplies and services, except as provided in § 82.69-2 or as otherwise indicated herein. The term "financing" as used in this part covers Government guaranteed loans, advance payments and progress payments (not including partial payments for delivery of one or more completed units called for under a contract) necessary for both performance and termination purposes, to the extent authorized by law.

## § 82.2 Purposes.

This part is intended to (a) state basic contract financing policy, (b) assure proper uniformity in policies procedures and forms, (c) provide for application of the fundamental management principle of internal check and balance, (d) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (e) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (f) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns.

## § 82.3 Application.

This part supersedes all regulations, directives, procedures and instructions inconsistent herewith, including the joint regulations dated December 17, 1956, issued as AR 715-6, NAVEXOS P-1006 (NPD 31-001) and AFR 173-133.

## § 82.4 Implementation.

The content of this part shall be distributed promptly to all personnel concerned with procurement and with contract financing, including contracting officers, for information and compliance. Copies of all implementing regulations, directives, procedures, and instructions, as issued from time to time within the Military Departments, at all

levels, shall be furnished promptly through channels to the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management) in the Department of the Air Force, with an additional copy to be forwarded by those contract financing offices, respectively, to the Assistant Secretary of Defense (Comptroller). Changes and additions for this part will be developed within the Contract Finance Committee, in the manner contemplated by §§ 82.12-3 and 82.32.

### Subpart A—Introduction

#### § 82.5 Scope of subpart.

This subpart describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority and responsibilities.

#### § 82.6 Guaranteed loans; authority.

(a) Under section 301(a) of the Defense Production Act of 1950, as amended, and section 301 of Executive Order No. 10480, the Department of the Army, the Department of the Navy, and the Department of the Air Force, among others, are designated as "guaranteeing agencies," and authorized by section 302 (a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan \* \* \* which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

(b) As defined in section 702(d) of the Defense Production Act of 1950, as amended, "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity."

#### § 82.7 Guaranteed loans; description.

Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient

medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

#### § 82.8 Advance payments; authority.

Advance payments on all contracts are authorized in accordance with the provisions of 10 U.S.C. 2307. When appropriate, advance payments are also authorized pursuant to the Act of August 28, 1958 "to authorize the making, amendment and modification of contracts to facilitate the national defense" (Pub. Law 85-804, 72 Stat. 972), Executive Order No. 10789, and Department of Defense Directive No. 7830.1. Navy advance payments for salvage operations are also authorized by 10 U.S.C. 7364.

#### § 82.9 Advance payments; description.

Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making sub-advances to sub-contractors.

#### § 82.10 Progress payments; authority.

Progress payments are authorized in accordance with the provisions of 10 U.S.C. 2307.

#### § 82.11 Progress payments; description.

The term "progress payments," as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in this part this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

#### § 82.12 Responsibilities.

Sections 82.12-1 to 82.12-3 set forth organization and responsibilities.

##### § 82.12-1 Organization.

In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times. Insofar as progress payments are concerned, it is contemplated that contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid un-

due risk to the Government, but will otherwise participate only in specific cases involving policy questions or unusual financial arrangements and conditions.

##### § 82.12-2 Resolution of disagreements.

If a disagreement arises between the financing office and the interested procuring activity in any Department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

##### § 82.12-3 Responsibility; administration; Contract Finance Committee.

(a) The responsibility for insuring uniform administration of financing in accordance with directions shall be in the Assistant Secretary of Defense (Comptroller). Specific cases need not be referred to the Office of the Assistant Secretary (Comptroller), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Military Departments.

(b) Responsibility for financing in each Department shall be in the Under or Assistant Secretary responsible for the comptroller function, with the focal point of such activities at Departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

(c) There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Comptroller) as Chairman, a representative of the Assistant Secretary of Defense (Supply and Logistics) and two representatives of each Military Department (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his own initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Supply and Logistics) such further policy directives on the subject of financing as may appear desirable. This Committee shall be responsible also for the formulation, revision and promulgation of uniform regulations on contract financing (§ 82.32). For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

**Subpart B—Basic Policies****§ 82.13 Scope of subpart.**

This subpart sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the sections of this part relating to each method of financing.

**§ 82.14 Acceleration of payments.**

Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments.

**§ 82.15 Timely action.**

In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

**§ 82.16 Uniformity.**

Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Military Departments and, to the extent mutually agreed upon by the Military Departments, facilities and personnel are to be used in common.

**§ 82.17 Small business.**

Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by a Military Department.

**§ 82.18 Purpose of contract financing.**

The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

**§ 82.19 Support of procurement; minimizing monetary loss.**

Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

**§ 82.20 Reasonable need.**

Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

**§ 82.21 Working capital purposes.**

(a) Guaranteed loans under section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

(b) It is not the intent of these regulations, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature: *Provided*, That the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

(c) Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

(d) These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

**§ 82.22 Order of preference.**

In determining what form of financing shall be recommended or made available to suppliers, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

(a) Private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;

(b) Customary progress payments, as described herein (§ 82.72) including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (§ 82.73) except that guaranteed loans may be preferable to customary progress payments when so indicated by a contractor and financing institution; or progress payments based on a percentage or stage of completion, confined to contracts for construction (§ 10.101-6 of this chapter), shipbuilding and ship conversion, alteration or repair;

(c) Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);

(d) Unusual progress payments, as described herein (§ 82.74), not including contracts involving advance payments;

(e) Advance payments (§ 82.58).

**§ 82.23 Financing not a handicap.**

The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (§§ 1.903-1 and 2.406 of this chapter and §§ 82.24 and 82.25). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a Military Department. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (a) at excessive interest rates or other exorbitant charges, or (b) from agencies of the Government outside the Department of Defense.

**§ 82.23-1 Non-indication of contract financing need.**

Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

**§ 82.24 Financial responsibility of contractors.**

Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (a) disrupt production schedules, (b) cause wastage of manpower and materials, and (c) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary

losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of § 1.903-1, or § 2.406 of this chapter, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in § 1.903-1, § 2.406 or § 3.101 of this chapter, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out below.

#### § 2.24-1 Small volume of work.

Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

#### § 2.24-2 Large volume of work.

Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, suppliers and subcontractors.

#### § 2.24-3 Unrealistic cost estimates.

Incompetence, carelessness, or over-optimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor

has no sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

#### § 2.24-4 Technical and engineering evaluation.

While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

#### § 2.24-5 Importance of type contract, development.

The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fixed-price with escalation or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in non-delivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evaluation be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and

difficulties of performance and their relation to projected costs of the work.

#### § 2.24-6 Engineering, production, and purchase plans.

Company plans may contemplate engineering costs, tooling costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase prices of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

#### § 2.26 Coordination before contract award.

For effective application of the principles stated in § 2.25, each purchasing office should be staffed with and use the services of persons qualified and competent to evaluate credit and financial problems, or each contracting officer should have available within his procuring activity, and should use the services of persons so qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply

are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management), of the Air Force. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

#### § 82.27 Financial information and analysis.

(a) The necessity for financial information and analysis, and the scope, depth and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of customary progress payments (1) for contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or (2) for contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where (1) the contractor is a new supplier to the procuring activity, or (2) the contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding twelve months, or (3) the contractor is a newly organized concern, or (4) the contractor is on a list requiring pre-award clearances or special clearance prior to awards, or (5) the contractor is on any current list indicating current or past contract defaults or delinquencies, or (6) the contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work, or (7) the contractor is listed on the consolidated list of contractors indebted to the Government (Hold-Up List), or (8) there

are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

(b) When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

#### § 82.28 Appropriate information; purposes.

The kinds of information and data that may be appropriate under the circumstances of particular cases (§ 82.27) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform its contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that may be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that only those items which are appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and

profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with paragraph (a) of this section;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see §§ 82.28-1 and 82.28-2);

(g) Estimated profit and loss statements and estimated balance sheets (see § 82.28-3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease-purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of in-

ventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to annual sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this section. See §§ 82.24-1 to 82.25-6.

#### § 82.28-1 Cash flow forecast, and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess of projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

#### § 82.28-2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the:

(a) Estimated amounts and timing of purchases of materials, parts, components, sub-assemblies, services, and payments therefor;

(b) Estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;

(c) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(d) Projected manufacturing and production schedules;

(e) Projected shipments, or delivery acceptances;

(f) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(g) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(h) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

#### § 82.28-3 Estimated profit and loss statements and balance sheets.

(a) The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

(b) The inter-relationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated in charts 1 and 2:

CHART NO. 1

#### PROJECTION OF FINANCIAL STATEMENTS

	1st mo.	2d mo.	3d mo.	Totals
<i>Profits and Loss Projection</i>				
Net Sales.....	123			
Materials used.....	42			
Direct labor.....	31			
Manufacturing exp.....	32			
Cost of goods sold.....	105			
Gross profit.....	18			
G & A exp.....	10			
Operating profit.....	8			
Income tax provision.....	4			
Net profit.....	4			
<i>Cash Projection</i>				
Cash balance (opening).....	78			
Receivable collections.....	112			
Progress payments received.....	30			
Bank loan proceeds.....	100			
Total proceeds.....	320			
Trade payables paid.....	76			
Direct labor paid.....	31			
Manufacturing exp. paid.....	35			
G & A exp. paid.....	9			
Payment on long term debt.....	2			
Fixed asset addition.....	4			
Income taxes paid.....	11			
Progress payments repaid.....	24			
Bank loan repayment.....	66			
Total disbursements.....	253			
Cash balance (closing).....	62			
<i>Balance Sheet Projection</i>				
Assets:	Beginning			
Cash.....	78			
Receivables.....	188			
Inventory.....	306			
Current assets.....	572	569		
Fixed assets (net).....	53	50		
Deferred charges.....	27	25		
Total assets.....	652	650		
Liabilities:				
Notes payable—banks.....	150	184		
Progress payments outstanding.....	56	62		
Trade payables.....	102	71		
Income tax.....	45	38		
Accruals.....	30	24		
Current liabilities.....	383	379		
Long term debt.....	62	60		
Capital stock.....	153	153		
Surplus.....	54	58		
Total liabilities and net worth.....	652	650		
Working capital.....	189	190		

CHART NO. 2

## INTER-RELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS

	Bal sheet (begin- ning)	Cash flow		Profit and loss		Bal sheet (end- ing)	Net chang- es
		DR	CR	DR	CR		
Assets:							
Cash.....	78		16			62	(16)
Receivables.....	188		112			199	11
				Purchases.....123			
				Dir. labor and mfg. exp. incurred.....45	42 Mat. used.....31 Dir. labor.....32 Mfg. exp.....	Applied	
Inventory.....	306					308	2
Current assets.....	572		128		105	569	(3)
Fixed assets.....	53	4			1 Depr. (G & A).....	56	3
Deferred charges.....	27				2 G & A exp.....	25	(2)
Total assets.....	652	4	128		108	650	(2)
Liabilities:							
Notes payable—banks.....	150	66	100			184	34
Progress payments.....	56	24	30			62	6
Trade payables.....	102	76			45 Purchases.....	71	(31)
Income tax.....	45	11			4	38	(7)
Accruals.....	30				62 Dir. labor and mfg. exp. incurred.....	24	(6)
		Paid { Dir. labor.....31 Mfg. exp.....35 G & A exp.....9 }			7 G & A exp.....		
Current liabilities.....	383	252	130		118	379	(4)
Long term debt.....	62	2				60	(2)
Capital stock.....	153					153	
Surplus.....	54				4	58	4
Total liabilities and net worth.....	652	254	130		122	650	(2)

**§ 82.29 Termination financing.**

It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

**§ 82.30 Report of adverse developments; prompt decisions.**

When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts, including report of remedial or protective action taken or proposed, should be reported by the procuring activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

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**§ 82.31 Reports.**

Each Department shall submit reports of financing activities at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller).

**§ 82.32 Deviations; amendments.**

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with or varying from these regulations would be deviations. Deviations will be permitted only when necessary in exceptional circumstances, after (a) the proposed deviation has been presented to the Contract Finance Committee, (b) the recommendations of that Committee have been obtained, and (c) the approval of the Assistant Secretary of Defense (Comptroller) or his designated representative has been given. The above procedure will be followed also for amendments to these regulations. (See § 82.4.) The provisions of Subchapter A pertaining to deviations (§§ 1.109-2 and 1.109-3 of this chapter) and to amendments (§ 1.105 of this chapter) do not apply to these contract financing regulations.

**§ 82.33 Interpretations.**

It is important that this part and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of this part arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from Departmental headquarters, the question should be presented, through procurement channels, to

the procurement policy office of the Department primarily interested, namely, the Deputy Chief of Staff for Logistics, Office of Naval Material, or Deputy Chief of Staff/Materiel. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of these regulations) should be made to the appropriate one of the procurement policy offices mentioned. Those are expected to take appropriate and timely action to obtain the views of interested offices of the other Departments, including the contract financing offices (§ 82.26). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of this part, appropriate revision of this part, will be considered in the manner outlined in § 82.4. In periods between any amendments of this part, it is contemplated that information on important interpretations of general interest, reported to or made at Departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

**Subpart C—Guaranteed Loans****§ 82.34 Scope of subpart.**

This subpart covers the policies, organization, and procedure particularly applicable to guaranteed loans.

**§ 82.35 Federal Reserve banks.**

Under section 302(b) of Executive Order No. 10480, pursuant to section 301(b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

**§ 82.36 Board of Governors of the Federal Reserve System.**

Under section 302(c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (a) to prescribe such regulations governing the actions and operations of fiscal agents as it may

deem necessary, (b) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (c) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

**§ 32.37 Procedure on application of a private financing institution.**

A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested contracting officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including certificate of eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal Reserve Bank makes any necessary credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement, with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution which makes the loan. Substantially the same procedure may be followed on

application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

**§ 32.38 Loan guarantees to Federal Reserve Banks.**

The Defense Production Act of 1950, as amended, and Executive Order No. 10480 also authorize guarantees for loans made or participated in by Federal Reserve Banks. The procedure outlined in § 32.37 applies also to loan guarantees where a Federal Reserve Bank is making or participating in the loan, except that in such cases the interested Federal Reserve Bank, as a financing institution, does not act as fiscal agent, and when approved, the guarantee agreement is executed by an official of the guaranteeing agency.

**§ 32.38-1 Other Government agencies.**

Loan guarantees are not issued to other departments or agencies of the Government.

**§ 32.39 Loan guarantees for terminated contracts.**

(a) Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans also may be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

(b) The procedure on applications for such guarantees will be substantially the same as that outlined in § 32.37, except that certificates of eligibility (§§ 32.48 to 32.49(k)) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken, as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in § 32.47(b). Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

**§ 32.40 Guaranteeing agency.**

The guaranteeing agencies which have been designated under section 301 of the Defense Production Act of 1950, as amended, are the Departments of the Army, Navy, Air Force, Agriculture, Commerce and Interior, General Services Administration, and Atomic Energy Commission. All of the guaranteeing agencies have concurred in the following policy:

Where a prospective borrower under a V-loan has defense contracts or subcontracts in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will be in general that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government. In this connection, among the Military Departments, single service procurement contracts are deemed those of the purchasing department.

**§ 32.40-1 Effect on preponderance of progress payments or denial of certificate of eligibility.**

Among the Military Departments, the determination of preponderance of interest, under § 32.40, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts.

**§ 32.40-2 Shifting of preponderance.**

During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Military Departments, as guaranteeing agency, to another Military Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Military Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extensions of maturity for a period of more than six months, ordinarily will be taken by the Military Department then having such preponderance of interest. However, in the above situation, action will be taken by the Military Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favor-

able action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Military Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Military Department then having preponderant interest in the case, and the information to be submitted with the application need be only current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and its operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

#### § 82.41 100 percent guarantees.

It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

#### § 82.42 Asset formula.

It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances.

#### § 82.43 Amount and maturity of guaranteed loans.

(a) Subject to the limitations of the asset formula (§ 82.42), the maximum

amount of guaranteed credit in individual cases, and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

(b) Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

#### § 82.44 Assignments of claims under contracts.

(a) Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (1) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or (2) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or (3) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

(b) It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

(c) Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (1) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after

notice of the assignment, or (2) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense production contracts under which the borrower is the seller.

#### § 82.45 Other collateral security.

Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and stand-bys of other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

#### § 82.46 Contract surety bonds in relation to loan guarantees.

In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of its obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

(a) Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on its bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

(b) Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it sometimes may be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

(c) In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to

the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

(d) In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

#### § 82.47 Other borrowings.

Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

(a) However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the V-loan.

(b) If a credit is to be guaranteed under section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

(c) It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the

continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

#### § 82.48 Eligibility Certifications.

(a) Financing through guaranteed loans may be made available to a supplier in cases where (1) the production or service is essential and (2) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees or loans to be made to small business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the certificate of eligibility. When financing through loan guarantees is requested, the interested procuring activity shall certify that the case meets the requirements set forth in this section, and shall accompany such certification with adequate supporting data pertinent to the case.

(b) (1). The certificates of eligibility and supporting data furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of section 301 of the Defense Production Act of 1950, as amended, and of section 302 of Executive Order No. 10480.

(2) In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except for small business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of certificates of eligibility, that:

This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of termination for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors.

#### § 82.49 Procedure for certificate of eligibility.

It is important that the processing of certificates of eligibility be accomplished expeditiously. It is necessary that there

be application of uniform and consistent standards in determining eligibility.

(a) As indicated in § 82.48(b), the determination in the certificate of eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on the established major policies affecting procurement, such as those relating to the mobilization base, and industrial dispersal. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the certificate of eligibility.

(b) Ordinarily, if the certificate of eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

(c) In determining eligibility of small business concerns, the factor of ready availability of alternative sources will not be considered, and the paragraph of the form of certificate of eligibility pertaining to alternative sources will be deleted in cases of small business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the certificate of eligibility should be provided automatically for small business concerns, or that any less care and diligence should be exercised for determining eligibility for small business cases than for other cases. See § 82.48(d).

(d) It is necessary in all cases, whether or not involving a small business concern, that, in considering issuance of a certificate of eligibility, emphasis be placed on the factors of the contractor's technical ability management competence and reliability, plant capacity and facilities, and generally on his ability to perform

satisfactorily if adequate financing is provided. If these factors are not favorable, the certificate of eligibility should not be issued. See §§ 82.23 and 82.24.

(e) With regard to contracts existing at the time of request for the certificate of eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the certificate.

(f) In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the certificate of eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary (§ 82.28 does not apply). All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interests of the Government. When the certificate of eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

(g) In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

(h) If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

(i) When certificates of eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for certificates of eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

(j) In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

(k) When a contracting officer or other person within a procuring activity responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

#### Subpart D—Advance Payments

##### § 82.50 Scope of subpart; references.

This subpart covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation except section 602 of the Department of Defense Appropriation Act, 1956 (69 Stat. 314, 31 U.S.C. 529 i), or other routine advances authorized solely by Appropriation Acts. It is to be applied in conformity to the policies stated in subpart B of this part. §§ 82.1, 82.2, 82.3, 82.4, 82.5, 82.8, 82.9, 82.12-2 and 82.12-3 are also applicable to advance payments.

##### § 82.50-1 Advance payments on subcontracts.

The policies, standards and procedures of Subpart D of this part are appli-

cable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to this Part, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers. See § 82.64-2 (q).

##### § 82.51 Types of contracts that may have advance payments.

Advance payments may be made on any approved type of contract, as defined in § 1.201-6.

##### § 82.52 Advance payments in addition to progress payments.

Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See § 82.77.

##### § 82.53 Interest.

(a) Interest will be charged on all advance payments hereafter authorized, at the rate of five percent per annum on the unliquidated balance: *Provided, however,* Advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on contracts solely for the management and operation of Government-owned plants, or, in unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments, hereafter authorized, should provide that the contractor will charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and that interest charged on such sub-advances or down payments will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as a cost under any cost-reimbursement type contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

##### § 82.54 Standards; amounts; need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance pay-

ment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (1) non-profit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

#### § 82.55 Statutory requirements.

The authorizing statutes (§ 82.8) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(a) The contractor give adequate security; (§ 82.63)

(b) The advance payments shall not exceed the unpaid contract price;

(c) The making of advance payments is in the public interest, as determined by the authorized official concerned (§§ 82.56 and 82.56-1), when the action is pursuant to the authority of Title 10, U.S. Code, Section 2307;

(d) The making of advance payments will facilitate the national defense, as determined by the authorized official concerned (§§ 82.56 and 82.56-1), when the action is pursuant to Pub. Law 85-804, and Executive Order No. 10789.

#### § 82.56 Responsibility; delegation of authority.

Except as provided in § 82.56-1 the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. The Government may not be committed, in any manner, directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with § 82.56-1), and no procurement involving advance payments may become final until such approval is obtained.

#### § 82.56-1 Delegation of authority.

The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than,

to the Comptroller of the Army (and an alternate within his office) in the Department of the Army, to the Assistant Comptroller, Accounting and Finance (and an alternate within his office) in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force (and an alternate responsible to such Deputy for Contract Financing). However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Assistant Secretary of Defense (Comptroller).

#### § 82.57 Public Law 85-804; formally advertised contracts.

(a) Pursuant to Public Law 85-804, and Executive Order No. 10789, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (1) the award may be made with provision for advance payments, in conformity with these regulations, or (2) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (3) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

#### § 82.57-1 Special contract provisions.

All contracts providing for advance payments under the authority of the above-cited Act (P.L. 85-804) and Executive Order shall—

(a) Make reference to the Act and Executive Order; and

(b) Include appropriate clauses required by the Act and Executive Order (§ 17.102 of this chapter), or by other applicable regulations. (See §§ 7.203-7, 7.402-7 of this chapter).

#### § 82.57-2 Data.

Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Pub. Law 85-804) and Executive Order.

#### § 82.58 Uses of advance payments.

Advance payments are last in the general order of preferences stated in § 82.22. Subject to the provisions of this part, advance payments are considered useful and appropriate for (a) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work (§ 82.54), (b) contracts solely for the management and operation of Government-owned plants (§ 82.54), (c) contracts for acquisition of facilities at cost, for Government ownership, (d) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (e) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract, (f) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned, (g) contracts for the financing of which a financing institution will not (1) assume a reasonable portion of the risks under a guaranteed loan, or (2) provide funds except at excessive interest rates or other exorbitant charges, and (h) exceptional cases in which the utilization of advance payments will be more beneficial to the interests of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small-business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

#### § 82.59 Standards for advance payment determinations; all contracts.

It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense in-

involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this section and §§ 82.15 through 82.26, 82.54, 82.55, 82.57 and 82.58. Affirmative recommendations should be made in favor of granting advance payments when (a) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (b) the contractor or prospective contractor is otherwise qualified as a responsible contractor (§§ 1.903-1 and 2.406 of this chapter and § 82.24); (c) there will be a benefit to the Government from performance prospects or other practical advantages, and (d) the case is within one or more of the categories described in § 82.58. These recommendations should be approved unless the responsible contract financing office (§ 82.26), or the Under or Assistant Secretary or other official concerned (§ 82.56), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to this part.

#### § 82.60 Findings, determinations, and authorization.

The following is the standard text of findings, determinations, and authorization (§ 82.62(f)) for use in establishing advance payments.

#### FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

##### FINDINGS

1. I hereby find that:
  - a. The \_\_\_\_\_ (Procuring Activity) and \_\_\_\_\_ have entered (Contractor) (propose to enter) into negotiated (formally advertised) Contract No. \_\_\_\_\_, (dated \_\_\_\_\_).
  - [Summary of significant facts concerning contract]
  - b. Advance payments (in an amount not to exceed \$\_\_\_\_\_ at any time outstanding) (in aggregate amount not exceeding \$\_\_\_\_\_, less the aggregate amounts repaid, or withdrawn by the Government) are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.
  - c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.
  - d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.
  - e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the contractor, and the amount designated above is predicated upon the use of

the contractor's own working capital to the extent possible in performing the contract.

- f. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (.) (research and development) work, without profit to the contractor.

- g. The contract is solely for the management and operation of a Government-owned plant.

- h. The following unusual facts and circumstances favor the making of advance payments to the contractor without interest:

[Recitation of pertinent facts and circumstances]

##### DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest of five per cent per annum on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

##### AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$\_\_\_\_\_, are hereby authorized pursuant to 10 U.S.C. 2307 (The Act of August 28, 1958, Pub. Law 85-804, 72 Stat. 972, and Executive Order No. 10789), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. \_\_\_\_\_ are hereby superseded.)

\_\_\_\_\_  
[Name typed]

\_\_\_\_\_  
[Title of authorized official]

##### INSTRUCTIONS

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (§ 82.56), by such office as may be designated by the procedures of each Military Department. It will include such of the paragraphs set out above as are appropriate. (See below.)
2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will not be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.
3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e. will not be included in the case of nonprofit contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g. or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

#### § 82.61 Application for advance payment.

The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by:

- (a) Cash flow forecast (§§ 82.28(f), 82.28-1 and 82.28-2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in § 82.58(a) or § 82.58(b));

- (b) Proposed amount of advance payments;

- (c) Name and address of bank suggested as depository for the advance payment special account;

- (d) Except for contracts mentioned in § 82.58(a) and (b) and description of efforts made to obtain private financing, including guaranteed loan; and

- (e) Such other information and data (§ 82.28) as may be appropriate under the circumstances of the case for the purposes outlined in § 82.28 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in § 82.58(a) and (b)).

#### § 82.62 Action by contracting officer; approval.

After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

- (a) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any, contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available.

- (b) The request and information furnished by the contractor;

- (c) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

- (d) Comment on (1) the need for the advance payments for performance of the contract, and (2) the benefits to the Government from the contemplated contract performance;

(e) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(f) The appropriate findings, determination and authorization (§ 82.60) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(g) Recommendation that the advance payment be approved; and

(h) Justification of proposal, if any, for waiver of interest charge (§ 82.53).

#### § 82.6-1 Action by contracting officer, disapproval.

If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the Army Comptroller, in the Department of the Army, to the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force. This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of this part.

#### § 82.63 Security; supervision; covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or cor-

porate endorsements or guarantees, pledges of collateral, subordination or stand-by of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

#### § 82.64 Forms of contract provisions and supplemental agreements.

The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify § 82.64-1(b) and the second sentence of § 82.64-2.

#### § 82.64-1 Forms of agreement for special bank account.

For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

##### AGREEMENT FOR SPECIAL BANK ACCOUNT

Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_, hereinafter called the Contractor, and \_\_\_\_\_, a banking corporation under the laws of \_\_\_\_\_, located at \_\_\_\_\_, hereinafter called the Bank.

##### RECITALS

(a) Under date of \_\_\_\_\_, 19\_\_\_\_, the Government and the Contractor entered into Contract(s) No. \_\_\_\_\_, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "\_\_\_\_\_,"

(Name of Contractor)

\_\_\_\_\_ Special Bank Account." (Department)

##### COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be supe-

rior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the \_\_\_\_\_ stationery and purporting to be signed by, or by the direction of \_\_\_\_\_ or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the \_\_\_\_\_.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify \_\_\_\_\_.

(Administering Office)

In witness whereof the parties hereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

#### § 82.64-2 Advance payment provisions.

Approved contract provisions for advance payments, with directions for use where appropriate, follow:

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (n) (4) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (n) (1) below; (iii) without a properly certified invoice or invoices.

(b) *Special bank account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (n) (2) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or

such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (b)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Part 15 of Subchapter A), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (c) above.]

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article \_\_\_\_\_ of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in (n) (1). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (----- percent) of the stated contract price of \$-----, or such lesser amount to which the contract price may have been reduced, plus (1) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate \$-----,

(Insert here not more than 10 percent of stated contract price above)

and (ii) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (e), with appropriate percentages specified]:

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of ----- percent from any and all payments made by the Government under the contracts involved.

[In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (e) above.]

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of \$----- for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, \$-----,

(Insert not more than 10 percent of estimated costs stated above)

(including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Interest charge.* If required in paragraph (n) (3) below and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (n) (3) shall be computed at the end of each calendar month in the manner herein specified on the average daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365 or 366 day year as the case may be. In determining such balance,

(1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [For cost-reimbursement contracts, use, instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence: As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the Contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (k) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(g) *Bank agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on special bank account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(i) *Lien on property under contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such

a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, *inter alia*, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (1) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (3) has allocated inventory to this contract substantially exceeding reasonable requirements, or (4) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its

discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances: (a) withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (b) charge interest on advance payments outstanding during the period of any such default at the rate of six percent (6%) per annum; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(m) *Information—access to records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

(n) *Designations and determinations—*  
(1) *Amount.* The aggregate amount of the payments at any time outstanding hereunder shall not exceed \$----- [or, alternatively:]

(1) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (d) shall not exceed \$-----.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be -----.

(3) *Interest charge.* Interest shall be charged in the manner provided herein at the rate of five percent per annum. [In the case of advance payments made without interest, insert the following:] No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (k) (b). The Contractor shall charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments is designated as -----.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(p) *Representations and warranties.* To induce the making of the advance payments, the Contractor represents and warrants that:

(1) The balance sheet, the profit and loss statement and any other supporting financial statements, hereto furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(3) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(4) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(6) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(7) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments.

(q) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed ----- percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substan-

tially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

(r) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of \$----- per annum;

(9) Make any substantial change in management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of its business or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(13) Make or covenant itself to make capital expenditures exceeding in the aggregate \$-----;

(14) Permit its net current assets, calculated in accordance with generally ac-

cepted accounting principles, to become less than \$-----; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

#### § 82.65 Pooled advance payments; general.

Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of nonprofit contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in paragraph § 82.8.

#### § 82.65-1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

#### § 82.66 Advance payment pool agreements; special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s)";

(b) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(c) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s)";

(d) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts";

(e) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account;

(f) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

#### § 82.67 Liquidation; designated pool contracts; administering office.

It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

#### § 82.68 Pooled advance payments; understandings.

Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. There has not been sufficient experience with pooled advance payments to permit full coverage by these regulations. However, certain understandings which have been reached on some of the problems involved are set out below, for the guidance of all concerned.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Military Department, the authorizing Department ordinarily would be the one having preponderant interest in the con-

tractor's backlog of unfinished contracts, along the lines of § 82.40. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a non-preponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Military Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

#### Subpart E—Progress Payments Based on Costs

##### § 82.69 Scope.

This subpart provides uniform policies, procedures, and forms for progress payments based on costs.

##### § 82.69-1 References.

Sections 82.1, 82.2, 82.3, 82.4, 82.5, 82.10, 82.11, 82.12, and all of Subpart B apply to all progress payments, whether based on costs or on a percentage or stage of completion.

##### § 82.69-2 Exclusions.

This subpart does not apply to (a) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (§ 82.83), or (b) contracts for construction (as defined in § 10.101-6 of this chapter), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

##### § 82.69-3 Contract coverage.

Except as provided in § 82.69-2, this subpart applies to all contracts (§ 1.201-6 of this chapter) providing for progress payments. This subpart applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith.

##### § 82.70 Percentage or stage of completion.

Progress payments based on a percentage or stage of completion will be confined to contracts for construction (§ 10.101-6 of this chapter), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable. See § 82.85-1.

##### § 82.71 General.

It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It seldom should be necessary for progress payments based on costs to exceed 85 percent of direct labor and material costs, or 70 percent of total costs, of the work done under the undelivered portion of the contract.

##### § 82.71-1 Requests for proposals.

Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

##### § 82.72 Customary progress payments; standards.

(a) Certain types of production contracts involve a long "lead time" or pre-

paratory period, normally approximating six months or more between the beginning of work and the first delivery, and may require contractor's pre-delivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment, tanks and other items of heavy ordnance.

(b) Progress payments have been traditional and customary on this class of contracts, on the basis of a percentage of total costs or of direct labor and material costs.

(c) Percentages for customary progress payments shall be not more than 70 percent of total costs or 85 percent of direct labor and material costs of the work done under the undelivered portion of the contract, except that for negotiated contracts with small business concerns and for procurement by "Small Business Restricted Advertising" or pursuant to § 82.73-3, these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs whenever deemed reasonably necessary. Higher percentages will be regarded as unusual, and not within the category of customary progress payments.

(d) The long lead time or preparatory period in these cases, and the accompanying pre-delivery expenditures that may have a material impact on the contractor's working funds, are regarded as making these customary progress payments reasonably necessary, and as making the general preference for private financing not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate pre-award investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, e.g., contracts for less than \$1,000,000. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

##### § 82.72-1 Applicability of percentages.

The standard percentages authorized by §§ 82.72 and 82.73 shall apply to new contracts, new procurement effected by supplements, amendments or modifications of existing contracts, definitive contracts superseding letter contracts, instruments effecting new procurement under basic or master agreements, and

to all supplements, amendments or modifications which affect or provide for progress payments, as well as to any outstanding contracts which contain optional provision as to progress payment percentages, after due notice by the contracting officer. See § 82.93.

**§ 82.72-2 Amendment to reduce percentages.**

Contracting officers are authorized and encouraged to negotiate amendments of existing contracts so as to reduce the progress payment percentages therein stated to the standard percentages mentioned in §§ 82.72 and 82.73.

**§ 82.72-3 Indefinite quantity contracts.**

For indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. The standards for unusual progress payments govern when progress payments are not of the customary type.

**§ 82.72-4 Administration.**

When progress payments are provided in the cases mentioned in § 82.72-3, such as indefinite quantity contracts for overhaul or maintenance, (a) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders or their equivalent issued under the basic contract, (b) costs for progress payment purposes are the cost allocable to all such requisitions, etc., and (c) payments and liquidations will be handled in the same way as if all such requisitions, etc., constituted work under a single fixed-price type contract.

**§ 82.73 Formal advertising; small business restricted advertising.**

Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

**§ 82.73-1 Progress payment provision in invitations for bids.**

(a) When progress payments are contemplated, the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 70 percent of total costs or 85 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that the need for progress payments

conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts, and that bids including requests for progress payments will be evaluated on an equal basis with bids not including requests for progress payments.

(b) Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed six months, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of pre-delivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

(c) Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately \$100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turnover items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (1) subsistence, (2) clothing and apparel, (3) "off-the-shelf" items, and (4) standard commercial items or equivalent items (including medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

(d) Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (1) facilitate necessary contract financing assistance to small suppliers and (2) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

**§ 82.73-2 Small business restricted advertising.**

The above policy and standards also apply to procurement by "Small Business Restricted Advertising," except that in "Small Business Restricted Advertising" (and also for procurement pursuant to § 82.73-3), when deemed reasonably necessary, provision may be made for progress payment percentages up to 75 percent of total costs or 90 percent of costs of direct labor and material.

**§ 82.73-3 Progress payments exclusive for small business.**

A stated purpose of Public Law 85-800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies

"may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by §§ 82.73-1 and 82.73-4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small business concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (§ 82.73-1) and the notice to bidders (§ 82.73-4) will be supplemented by a limitation to the effect that "The progress payments clause will be available to small business concerns only, and will not be included for contractors who are not small business concerns." (For percentages, see §§ 82.72 and 82.73-2.)

**§ 82.73-4 Notice to bidders.**

Those invitations for bids that make provision for progress payments (§ 82.73-1) should contain substantially the following notice to bidders:

**PROGRESS PAYMENTS**

The need for progress payments conforming to regulations (Part 82, Subchapter G) will not be considered as a handicap or adverse factor in the award of contracts. Bidders desiring progress payments in accordance with the Progress Payment clause attached hereto, shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including a request for progress payments. Blanks, if any, in the attached Progress Payment clause, will be filled in by the Contracting Officer, before award, in conformity with regulations.<sup>1</sup> If a bid does not contain a request for progress payment provision, the Progress Payment clause will not be included in the contract as awarded.

**§ 82.73-5 Total costs clause preferable.**

The Total Costs clause (§ 82.79-1) is preferable to the Direct Labor and Materials Cost clause (§ 82.79-2) in procurement by formal advertising and in Small Business Restricted Advertising. When the Total Costs clause (§ 82.79-1) is used, it is not necessary to make the cost estimates and computations that are required before the appropriate percentages can be determined for (a) (3) (ii), (a) (4) and (b) of the Direct Labor and Materials Cost clause (§ 82.79-2). Generally, the principles of §§ 82.92 and 82.93-6 should be simpler to apply to the Total Costs clause (§ 82.79-1) than to the Direct Labor and Materials Cost clause (§ 82.79-2).

**§ 82.73-6 Non-responsive bids; uninformed progress payment condition.**

To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included

<sup>1</sup> Omit the third sentence, above, when the Total Costs clause (§ 82.79-1) is used.

in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (§ 82.73-3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

**§ 82.74 Unusual progress payments; standards; procedure.**

(a) Progress payments based on costs, other than progress payments of the class and within the limits set forth in §§ 82.72 and 82.73, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the Military Departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Head of a Procuring Activity (§ 1.201-4) or of a general or flag officer designated for that purpose.

(b) Such cases must involve a preparatory period requiring contractor's pre-delivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

(c) All requests involving progress payments at rates exceeding 85 percent (or 90 percent for small business concerns) of direct labor and material costs or exceeding 70 percent (or 75 percent for small business concerns) of total costs, if regarded favorably by the Head of a Procuring Activity (§ 1.201-4) or by a specially

designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the Military Department directly concerned. Such office or person may be the contract financing office at departmental headquarters or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other Military Departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary above-mentioned, such approval will ordinarily extend to future contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority after review of the contractor's current condition and circumstances.

**§ 82.75 Accounting system and controls.**

The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by one of the Military audit agencies) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom a military audit agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a progress payment clause in a contract. For this purpose, the services of the military audit agencies should be utilized to the greatest extent practicable.

**§ 82.76 Information required.**

The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Subparts B and E of this part. For guidance as to necessity for financial information and analysis, and the scope, depth and detail of analysis, see particularly §§ 82.27 and 82.28.

**§ 82.77 Advance payments.**

When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed 85 percent of direct labor and material costs or 70 percent of total costs, whichever may be applicable.

**§ 82.78 Definitions.**

As used in this subpart, the terms in §§ 82.78-1 to 82.78-9 have the meanings set forth.

**§ 82.78-1 Progress payments.**

See § 82.11. The term "progress payments" must be distinguished from "partial payments." The term "partial payments" describes only (a) payments for partial deliveries accepted by the Government under a contract, or (b) partial payments on contract termination claims.

**§ 82.78-2 Customary progress payments.**

See §§ 82.72 and 82.73.

**§ 82.78-3 Unusual progress payments.**

See § 82.74.

**§ 82.78-4 Costs.**

Costs include all expenses of contract performance, which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in § 82.93-4.

**§ 82.78-5 Incurred costs.**

Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for completed work to which the prime contractor has acquired title, for materials delivered (to which the prime contractor has acquired title), for services rendered, and for costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and paid invoices for progress payments to subcontractors (when such progress payments are specifically provided for by the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) costs as shown by the books of the contractor.

**§ 82.78-6 Unliquidated progress payments.**

Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

**§ 82.78-7 Contract price.**

The term "contract price" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If

the contract provides for escalation or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

#### § 82.78-8 Amendments, supplements, and modifications.

The terms "amendment," "supplement," and "modification" are used interchangeably, and whenever one of these terms is used it includes the others. The terms "separate new contracts," and "separate contracts," as used herein, do not include "amendments."

#### § 82.78-9 Deviation.

The term "deviation" means (a) any change, addition to, or deletion from the contract clauses and certificate forms required by this subpart, (b) any contract provision, outside the progress payment clause, which would have the effect of altering or changing the effect of the progress payment clauses provided herein, and (c) any variation from these regulations. Actions pursuant to § 82.80-6 are not deviations.

#### § 82.79 Contract clauses.

Except as otherwise provided in § 82.85, one of the following progress payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. See § 82.79-3.

#### § 82.79-1 Total costs clause.

##### PROGRESS PAYMENTS

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 70 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) to the extent if any provided in the Schedule, the amount of the progress payments made by the Contractor to its subcontractors and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a) (1) (i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 70 percent of the costs mentioned in (a) (1) (i), above, plus any unliquidated progress

payments mentioned in item (a) (1) (ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 70 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 70 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 70 percent<sup>1</sup> of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a) (1).

(d) *Title.* When any progress payment is made under this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling;" non-durable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Govern-

<sup>1</sup>For lower percentage for this paragraph, see § 82.81-2.

ment clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports; access to records.* Insofar as pertinent to the administration of this clause, the Contractor will (1) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (2) give the Government reasonable opportunity to examine and verify its books, records and accounts.

(h) *Special provisions regarding default.* If this contract is terminated pursuant to the clause entitled "Default," (1) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (2) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of its obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

## § 82.79-2 Direct labor and materials cost clause.

### PROGRESS PAYMENTS

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 85 percent of the amount of the Contractor's costs incurred of direct labor and material<sup>1</sup> only under this contract plus (ii) to the extent, if any, provided in the Schedule, the amount of progress payments made by the Contractor to its subcontractors and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's costs above-mentioned ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 85 percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in (a)(1)(ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments. [For percentage here and in (a)(4), see the first bracketed instruction in (b) below.]

(4) The aggregate amount of progress payments made shall not exceed ----- percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of The Government," all progress payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments, or ---- percent [insert a percentage which is to 85 percent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total costs] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and § 82.81-1(b), see § 82.81-2.]

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate

<sup>1</sup> Strike out "labor and" or "and material" if progress payments are limited to single direct cost.

higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (1) has failed to comply with any material requirement of this contract, (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (3) has allocated inventory to this contract substantially exceeding reasonable requirements, (4) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a) (1) above, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (5) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (6) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* (Same as paragraph (d) or "Total Costs" clause.)

(e) *Risk of loss.* (Same as paragraph (e) of "Total Costs" clause.)

(f) *Control of costs and property.* (Same as paragraph (f) of "Total Costs" clause.)

(g) *Reports; access to records.* (Same as paragraph (g) of "Total Costs" clause.)

(h) *Special provisions regarding default.* (Same as paragraph (h) of "Total Costs" clause.)

(i) *Reservations of rights.* (Same as paragraph (i) of "Total Costs" clause.)

### § 82.79-3 Schedule provision for progress payments to subcontractors.

Where it has been determined (see § 82.82) that the Contractor shall be reimbursed for progress payments made to subcontractors, the following language shall be inserted in the Schedule of the contract, in connection with the use of one of the progress payment clauses set forth in §§ 82.79-1 and 82.79-2. Contractors should be encouraged to include the following provisions in the Schedule of contracts providing for progress payments, and to extend progress payments to subcontractors on subcontracts conforming to the standards mentioned in § 82.82.

#### PROGRESS PAYMENTS TO SUBCONTRACTORS

(a) The Contractor shall be reimbursed in accordance with the clause entitled "Progress Payments" for all of the progress payments made by the Contractor to subcontractors under subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as that clause (and no more favorable to the subcontractor than that clause is to the Contractor), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title pursuant to the subcontract, subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(b) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to it hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had

been thereupon assigned and transferred to the Contractor.

### § 82.80 General instructions for progress payment clauses.

The instructions below apply to the clauses required by § 82.79 and set forth in §§ 82.79-1 and 82.79-2.

#### § 82.80-1 Contracting officer.

The term "contracting officer" as used in this subpart means the contracting officer as defined in § 1.201-5 of this chapter.

#### § 82.80-2 Variation in percentages.

The percentages stated in (a)(1)(i) of the clauses in §§ 82.79-1 and 82.79-2 are the normal percentages for the customary progress payments authorized by § 82.72. Higher percentages may be provided in the manner and to the extent authorized by § 82.74. Lower percentages may be used in (a)(1)(i) of §§ 82.79-1 and 82.79-2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in § 82.74. Such lower percentages shall not be utilized for progress payments pursuant to § 82.73.

#### § 82.80-3 Total cost basis; percentage other than 70 percent.

If a percentage other than 70 percent is specified in (a)(1)(i) of the total costs clause set forth in § 82.79-1, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract shall also be specified in (a)(3)(i), (a)(3)(ii), (a)(4) and (b) of the Progress Payment clause. (As to (b), see § 82.81.)

#### § 82.80-4 Limited cost basis; other percentages.

When the Progress Payment clause set forth in § 82.79-2 is used, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract will also be specified in (a)(3)(i). The percentage to be specified in (a)(3)(ii), (a)(4), and (b) of that clause will be computed in the manner provided in § 82.81-1, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to § 82.81-2), the percentage to be specified in (a)(3)(ii), (a)(4), and (b) will thus be a percentage which is to the percentage in (a)(1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total costs of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in § 82.79-2, is utilized for progress payments. (See § 82.80-5.)

#### § 82.80-5 Cost basis less than direct labor and material costs.

Instead of the direct labor and material cost basis provided in § 82.79-2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor

only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a) (1) (i) of the clause set forth in § 82.79-2 when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a) (1) (i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a) (1) (i).

#### § 82.80-6 Other protective provisions.

When deemed reasonably necessary for the protection of the Government, the clauses set forth in §§ 82.79-1 and 82.79-2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or stand-bys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item (r) of § 82.64-2.

#### § 82.81 Progress payment liquidation.

Controlling principles for liquidation of progress payments based on costs are set out below.

##### § 82.81-1 Ordinary method.

Except as authorized by § 82.81-2, the required method for liquidation and the applicable liquidation percentages are:

(a) when costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e.g., when progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered, or when progress payments are based on 70 percent of all costs, liquidation will be at a rate not less than 70 percent of the contract price of separate items as they are delivered;

(b) when progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent ( $90 \times 70$ ) of the contract price of separate items as they are delivered. See § 82.81-3.

##### § 82.81-2 Alternate method.

(a) The above method for liquidation of progress payments (§ 82.81-1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the

parties shall agree on a percentage rate of liquidation which will (1) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (2) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (3) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted and invoiced.

(b) However, when progress payments are made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 82.81-1, to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in paragraph (c) of this section. If the progress payment percentage of total costs is less than 75 percent, comparable relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the costs of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs. For example, when progress payments are made at 70 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 82.81-1, to the extent appropriate, shall not be fixed at a rate less than 65.3 percent except as provided in paragraph (c) of this section.

(c) With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in paragraph (a) of this section, but less than the minimum liquidation percentages stated and outlined in paragraph (b) of this section, (e.g., less than 70 percent when progress payments are based on 75 percent of total cost or less than 65.3 percent when progress payments are based on 70 percent of total costs) may be established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (1) the cost of items that have been delivered, accepted and invoiced, (2) the cost of work not delivered, accepted and invoiced, (3) the estimated costs of completion, and (4) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

(d) Liquidation percentage rates as described herein, less than those prescribed by § 82.81-1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Con-

tracts may be amended to reduce the liquidation rate not more frequently than once in each period of twelve months. See § 82.81-3.

#### § 82.81-3 Liquidation percentages.

(a) Liquidation percentages shall conform to § 82.81-1, except as authorized by § 82.81-2.

(b) In the application of paragraphs (a) and (b) of § 82.81-2, when progress payments are at the rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by (a) and (b) of § 82.81-2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price \$105, (2) costs \$100, and (3) progress payments \$75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the \$75 of progress payments from the \$105 delivery billing ( $75 \div 105 = 71.5$  percent, and  $0.715 \times 105 = \$75.07$ ). The same principles are applicable when, pursuant to paragraph (c) of § 82.81-2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (i) fixed price \$108, (ii) costs \$100, and (iii) progress payments \$75, the calculation would be:  $75 \div 108 = 0.6944$ , and (rounding this upward to 0.695),  $0.695 \times 108 = \$75.06$ .

(c) Paragraph (b) of § 82.81-1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of paragraphs (a) and (b) of § 82.81-2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are:

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price \$105, costs \$100, costs of direct labor and material \$70, and progress payments \$63, then  $63 \div 105 = 60$  percent. Application of the 60 percent liquidation percentage to the delivery price of \$105 recovers the \$63 of progress payments.

(2) On assumptions the same as example (1), above, except that costs of direct labor and material are computed at 80 percent of total costs (\$80 of the total costs of \$100), so that progress payments on the item are \$72 (90 percent of \$80), the minimum liquidation percentage would be 68.6 percent ( $72 \div 105 = 68.6$  percent, i.e., 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of \$105 recovers \$72.03 against the \$72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to (a) and (b) of § 82.81-2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or costs more limited), will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, on example (1) next above (assuming profit rate of 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent ( $63 \div 107.3 = 58.72$  percent).

(e) The above principles (paragraphs (a), (b), (c), (d) of this section) apply when progress payments are at the rate of 70 percent of all costs or 85 percent of costs of direct labor and material, or at other percentages. In conformity to the above pattern, liquidation rates would be lower than those set out in (b), (c), and (d), to harmonize with percentages for progress payments that are lower than those mentioned in (b), (c), and (d). Thus, for instance, with regard to (a) above, if progress payments are at the rate of 70 percent of all costs (instead of 75 percent), the minimum liquidation rate comparable to the 70 percent liquidation rate mentioned in paragraph (b) of § 82.81-2, would be 65.3 percent (or a higher percentage if the estimated profit rate is less than 7.3 percent of all costs). In the first example given in paragraph (b) of this section with progress payments at 70 percent of total costs, assuming (1) price \$105, (2) costs \$100, and (3) progress payments \$70, a minimum liquidation percentage of 66.7 percent would be necessary for recovery of the \$70 of progress payments from the \$105 delivery billing ( $70 \div 105 = 66.7$  percent, and  $0.667 \times \$105 = 70.03$ ). In the second example given in paragraph (b) of this section, for application of paragraph (c) of § 82.81-2, assuming (i) fixed price \$108, (ii) costs \$100, and (iii) progress payments \$70, the minimum liquidation rate for the finally priced items would be 64.9 percent ( $70 \div 108 = 64.815$ , and rounding this upward to 64.9,  $0.649 \times \$108 = \$70.09$ ).

#### § 82.82 Subcontracts.

(a) The policies and standards set forth in this subpart are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on progress payments made by a prime contractor to a subcontractor.

(b) Progress payments to subcontractors may be included in the base for progress payments to prime contractors only when provision therefor is made in the prime contract Schedule, in the manner set forth in § 82.79-3. Except as provided below, this provision may be included in the Schedule of the prime contract only if the contractor agrees in writing that its progress payments to subcontractors, to be included in the base for progress payments pursuant to this Schedule provision and paragraph (a) of § 82.79-1 or § 82.79-2, will be limited to those subcontracts in which there is expected to be a long "lead time," approximating 6 months or more be-

tween the beginning of work and the first delivery, for subcontractors which in the opinion of the prime contractor meet the standards for customary progress payments outlined in § 82.72. However, this limitation does not apply to subcontracts providing for "unusual" progress payments on prime contracts as described in § 82.74, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in § 82.74. §§ 82.79-1(a)(2) and 82.79-2(a)(2) apply only to the "contractor's" costs mentioned in §§ 82.79-1(a)(1)(i) and 82.79-2(a)(1)(i) respectively. Sections 82.79-1(a)(2) and 82.79-2(a)(2) do not apply to the progress payments to subcontractors mentioned in §§ 82.79-1(a)(1)(ii) and 82.79-2(a)(1)(ii) respectively. This interpretation governs existing §§ 82.79-1 and 82.79-2 clauses in contracts, as well as new contracts in which a new clarifying reference to "(a)(1)(i)," as set out above, will be included in (a)(2) of the Progress Payment clause.

#### § 82.82-1 Subcontractor progress payments.

When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor. When provision is made in the contract Schedule for inclusion of unliquidated progress payments made to subcontractors, the percentage for reimbursement on account of progress payments made to subcontractors will be stated at 100 percent, i.e., "all." When a percentage less than 100 percent has been specified on existing contracts, this lesser percentage will control the amount of progress payments to be made pursuant to (a)(1)(ii) of §§ 82.79-1 and 82.79-2 and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under (a)(3)(i) of §§ 82.97-1 and 82.79-2.

#### § 82.82-2 Adaptation of uniform clause for subcontracts.

(a) Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the progress payment clause of prime contracts. The duty rests on the prime contractor to see to it that its subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the Schedule provisions set forth in § 82.79-3, conform to these provisions of the contract Schedule (§ 82.79-3). In adapting the clauses set forth in §§ 82.79-1, 82.79-2 and 82.79-3 for use in subcontracts, to conform to § 82.79-3, the subcontract progress payment clause should have appropriate changes to reflect the position of the prime contractor

as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the progress payment clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in §§ 82.79-1(d) and 82.79-2(d), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that section of the subcontract. In that title section of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the section. In the subcontract counterpart of §§ 82.79-1(g) and 82.79-2(g) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor" (§§ 82.79-1(g)(i), 82.79-2(g)(i)), and to the "Government or the prime contractor" (§§ 82.79-1(g)(ii), 82.79-2(g)(ii)).

(b) With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (§§ 82.79-1(h), 82.79-2(h)) only the substance of the first three lines of that section (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of § 82.79-3.

#### § 82.83 Progress payments on subcontracts under cost-reimbursement types of prime contracts.

The policies, standards and procedures of this subpart and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to this part. Specifically, the case must meet the standards for customary progress payments (§ 82.72) and progress payment percentages must not exceed those authorized by § 82.72 (unless unusual progress payments to the subcontractor are approved by the procedure described in § 82.74), liquidation must conform to § 82.81, and one of the uniform clauses (§ 82.79) adapted for subcontract use (§ 82.82-2) must be utilized.

#### § 82.84 Letter contracts.

When progress payments are to be made under letter contracts or similar preliminary contractual instruments, incorporation of one of the clauses set forth in §§ 82.79-1 and 82.79-2 is required except as follows:

(a) §§ 82.79-1(a)(4) or 82.79-2(a)(4) will be replaced by a provision limiting the aggregate amount of progress payments made under the letter contract to a stated amount, not exceeding 70 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last

two sentences of § 82.80-4 if the clause set out in § 82.79-2 is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, §§ 82.79-1(b) or 82.79-2(b) concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

(1) If this letter contract shall be superseded by a fixed-price type contract (Subpart D, Part 3 of this chapter), unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.

(2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

(3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

(4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2), and (3) of this paragraph.

(5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand.

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the progress payment clause will be supplemented by further provision as follows:

The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in paragraph (a) of this progress payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract.

#### § 82.85 Transition.

Contracts in existence on the effective date of this subpart will continue to be administered in accordance with their provisions and this part. The transition to uniform use of a progress payment clause set out in this part (§ 82.79) will be accomplished in an orderly and reasonable manner and as promptly as practicable, as set forth below.

#### § 82.85-1 Separate contracts.

To the greatest extent feasible, procurement effected after the effective date

of this part, and involving the establishment or continuation of progress payments, will be accomplished by separate new contracts rather than by amendments of existing contracts.

#### § 82.85-2 Existing indefinite quantity contracts.

During the specified term of existing indefinite quantity contracts (not including any extension of such term) existing progress payment provisions conforming to § 82.72 with regard to progress payment percentage and conforming to § 82.81 with regard to rate of liquidation do not need to be replaced, incident to new procurement under such contracts, by a clause set forth in § 82.79.

#### § 82.85-3 Supplements, amendments, and modifications; when new clause not required.

When it is found necessary to effect new procurement by amendment of a contract (see § 82.85-1) already providing for progress payments based on costs, rather than by a separate contract, it is not required that the amendment include a clause set forth in § 82.79 if the progress payment clause already in the contract provides for progress payments not exceeding 70 percent of total costs or 85 percent of direct labor and material costs and also provides for liquidation conforming to § 82.81. However, in these cases, a clause set out in § 82.79 should be substituted for the existing progress payment clause whenever feasible.

#### § 82.85-4 Supplements, amendments, and modifications; gradual operation of new clause.

(a) When a contract provides for progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, and it is found necessary to accomplish additional procurement by an amendment rather than by a separate new contract (see § 82.85-1), the amendment should, whenever reasonable and practicable, substitute a clause set forth in § 82.79 for the progress payment clause of the contract, so as to limit all future progress payments on the entire contract to 70 percent of future total costs or 85 percent of future costs of direct labor and materials. When such substitution is made, substantially the following provision should be added:

For the purposes of paragraph (a) (1) of this clause, (i) progress payments made or to be made to the contractor on progress billings submitted to the Government on or before the date of this amendment (in the total amount of \$-----), shall be excluded in computing the "sum of previous progress payments" and (ii) costs (and progress payments to subcontractors) (in the total amount of \$-----), relating to the progress payments so excluded shall also be excluded in computing costs (and progress payments to subcontractors) eligible for progress payments under this amendment. The amount of progress payments unliquidated at the date of this amendment (\$-----), and the amount of progress payments included in progress billings pending at the date of this amendment (\$-----), aggregating (\$-----), shall be liquidated at the rate of ----- percent instead of the percentage stated in paragraph (b) of this clause. Paragraphs (a) (3) and (b) of this clause shall

not apply until liquidation of the aggregate amount of progress payments made or billed at the date of this amendment. Paragraph (a) (4) does not apply.

The expression "(and progress payments to subcontractors)" will be deleted if not applicable. Billings for progress payments pending at the date of the amendment will be paid in accordance with the Progress Payment clause in effect before the amendment. The rate for liquidation of unliquidated progress payments outstanding and to be outstanding pursuant to progress billings pending at the date of the amendment will be specified in accordance with the principles stated in § 82.81.

(b) When, in the circumstances described in paragraph (a) of this section, it is not reasonable and practicable to substitute a clause set forth in § 82.79 so as to limit all future progress payments on the entire contract to 70 percent of costs or 85 percent of costs of direct labor and material as the case may be, the amendment (incorporating a clause set forth in § 82.79, with percentages as specified in § 82.72) ordinarily will provide for segregation of costs attributable to work under the amendment, segregation of payments under the amendment, and administration of progress payments under the amendment on the same basis as if the amendment were a separate new contract. However, when it is found that it will be expensive or otherwise impracticable to separate costs of deliveries attributable to the amendment from those attributable to the other portion of the contract, the amendment will provide for one or the other of the arrangements described in paragraphs (c) and (d) of this section.

(c) When the last sentence of paragraph (b) of this section is applicable (and paragraph (d) of this section is not applied), the amendment will include a clause set forth in § 82.79 (with percentages conforming to § 82.72), with provision that it will become operative as herein provided. The amendment will provide for continuation of progress payments pursuant to the existing progress payment clause and for their liquidation pursuant to § 82.81, until (1) the aggregate amount of progress payments made under the contract, including progress payments previously made, equals (2) the aggregate amount of progress payments that would have been made at the previously established rates if the contract had continued without this amendment (less reductions from time to time to reflect decreases in anticipated total progress payments, resulting from any partial termination of the contract); and (3) when the amount described in subparagraph (1) of this paragraph equals the amount described in subparagraph (2) of this paragraph future progress payments will be governed by the progress payment clause included in the amendment, except that liquidation of the amount of unliquidated progress payments then outstanding will continue at the higher rate required to conform to § 82.81 until liquidation of such amount, and §§ 82.79-1(a) (4) and 82.79-2(a) (4) will not apply.

(d) When the last sentence of paragraph (b) of this section is applicable (and paragraph (c) of this section is not applied) the amendment will substitute a clause set forth in § 82.79 instead of the existing progress payment provision, but with the percentage specified for future progress payments being a weighted average percentage arrived at by dividing the amount described in subparagraph (1) of this paragraph into the amount described in subparagraph (2) of this paragraph (and with the special liquidation provision described in subparagraph (3) of this paragraph):

(1) The total of all future costs, eligible for progress payments, expected to be incurred for performance of the contract and this amendment.

(2) The sum of (i) the total of all future costs, eligible for progress payments, that would have been incurred for performance of the contract without this amendment (not including costs expected to be incurred on account of this amendment) multiplied by the percentage for progress payments theretofore specified in the contract, and (ii) the total of all future costs, eligible for progress payments, expected to be incurred solely on account of this amendment, multiplied by not more than 70 percent (or by not more than 85 percent if eligible costs are limited to direct labor and material).

(3) When such substitution is made, special provision will be added to require that (i) the unliquidated progress payments outstanding at the date of the amendment (and any progress payments made thereafter on progress billings pending at the date of the amendment) will be liquidated in the manner outlined in § 82.81, e.g., at 90 percent of delivery billings if those progress payments had been made at 90 percent of costs, or at percentages authorized by § 82.81-2, and (ii) that liquidation at the percentage specified in the progress payment clause substituted by the amendment will begin when liquidation at the higher rate mentioned in subdivision (i) of this subparagraph has been accomplished.

#### § 82.85-5 Supplements, amendments, and modifications concerning progress payments.

Supplements, amendments, and modifications of existing contracts which increase the rate or percentage of progress payments, or enlarge the base for progress payments, or reduce the rate of liquidation of progress payments, or make new provision for progress payments shall conform to this part and in particular to § 82.79.

#### § 82.85-6 Amendments reducing the rate of progress payments.

When contracts are amended to reduce the percentage for progress payments (§ 82.72-2), the principles set forth in § 82.85-4 are applicable, even though additional procurement is not involved.

#### § 82.86 Contract financing office clearance.

The following types of provisions for progress payments require submission

through channels and prior approval by the contract financing office (§ 82.26):

(a) Those involving progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, except as authorized by §§ 82.72, 82.73 and 82.85-4;

(b) Those involving deviations, as defined in § 82.78-9;

(c) Those exceptional cases, involving unusual risks, described in § 82.26;

(d) Those involving contractors as to whom it is known that within the preceding 12 months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn; and

(e) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List."

#### § 82.87 Coordination.

The coordination described in the paragraph (c) § 82.74 is required for all cases mentioned in paragraphs (a) and (b) of § 82.86.

#### § 82.87-1 Control lists.

To give effect to § 82.86(d), pertinent information will be exchanged between the several contract financing offices, and distributed through normal channels to contracting officers.

#### § 82.87-2 Hold-up list.

To give effect to § 82.86(e), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to contracting officers.

#### § 82.88 Contractor's request.

All invoices for progress payments on contracts containing the Progress Payment clause set out in § 82.79 (with or without the modifications authorized by § 82.85-4), and on contracts containing any deviation from that clause approved pursuant to §§ 82.86 and 82.87, will be supported by the Contractor's Request for Progress Payment (DD Form 1195) with any supporting information that may be reasonably required. This form of request also will be utilized as soon as practicable (unless incompatible with contract provisions) in connection with progress payments based on costs under existing contracts and other contracts (§§ 82.85-1, 82.85-2, 82.85-3) not containing one of the Progress Payment clauses set out in § 82.79. The use of this form is subject to the instructions set forth on the reverse thereof.

#### § 82.89 Audit.

For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (§ 82.75) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt pay-

ment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interests of the Government. Preaudit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Post-review or post-audit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

#### § 82.90 Administration; general.

Progress payment clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

**§ 82.90-1 Extent of supervision.**

The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

**§ 82.90-2 Use of progress payments by contractors.**

It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

**§ 82.91 Adjustments; retroactive price reduction; refunds.**

When a retroactive price reduction has been made effective, i.e., by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of §§ 82.79-1(b) and 82.79-2(b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (a) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (b) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and

in connection with voluntary refunds on such contracts.

**§ 82.92 Maximum unliquidated amount.**

In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with §§ 82.79-1(b) or 82.79-2(b), the amount of unliquidated progress payments will never exceed the maximum limit provided by §§ 82.79-1(a) (3) (i) or 82.79-2(a) (3) (i), unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit stated in §§ 82.79(a) (3) (i) and 82.79-2(a) (3) (i) after the first delivery payment unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract will involve a loss to the contractor or that a liquidation rate fixed pursuant to §§ 82.81-2 or 82.79-2(b) is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by §§ 82.79-1(a) (3) (i) and 82.79-2(a) (3) (i). However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amount permitted by §§ 82.79-1(a) (3) (i) or 82.79-2(a) (3) (i). The services of the cognizant audit agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel as required. See § 82.88, Section III, General Instructions, DD Form 1195; and § 82.93-6.

**§ 82.92-1 Quarterly statements on price revision contracts.**

Many price revision contracts now contain the payment limitation provisions required by Department of Defense Directive No. 4105.7 and substantially as set forth in §§ 7.108 and 7.109 of this chapter. Quarterly statements submitted by contractors pursuant to those contract provisions should be compared from time to time with the Contractor's Request for Progress Payments in order to assure so far as reasonably possible that costs attributed to delivered items on the quarterly statements are excluded from the costs set forth as the basis for unliquidated progress payments on the DD Form 1195 (or on other request forms so long as other forms are in use). If there is apparent disparity, request for completion of Section III of the DD Form 1195 (§ 82.88) would be appropriate.

**§ 82.93 Suspension or reduction of payments; general.**

In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment. §§ 82.79-1(c) and 82.79-2(c) provide that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by those paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. Those paragraphs will be administered with these purposes in mind. Action taken pursuant to those paragraphs will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under those paragraphs will be in writing.

**§ 82.93-1 Failure to comply with contract.**

Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to §§ 82.79-1(c) (i) or 82.79-2(c) (i) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (c) of the Default clause in § 8.707(c) of this chapter. Compliance with the material requirements of the contract, within the meaning of §§ 82.79-1(c) (i) and 82.79-2(c) (i) includes compliance with all provisions of the Progress Payment clause.

**§ 82.93-2 Unsatisfactory financial condition.**

If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in

§§ 82.79-1(c)(ii) or 82.79-2(c)(ii), is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of §§ 82.79-1(c)(ii) and 82.79-2(c)(ii), performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

#### § 82.93-3 Excessive inventory.

When inventory allocated to the contract is found substantially to exceed reasonable requirements (§§ 82.79-1(c)(iii) and 82.79-2(c)(iii)), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 of the contractor's request set out in § 82.88. If that is not regarded as sufficient in a particular case, or if the adjustment in item 7 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

#### § 82.93-4 Delinquency in payment of costs of performance.

The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (§§ 82.79-1(c)(iv) or 82.79-2(c)(v)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (a) cure the contractor's delinquencies in payment of his costs of contract performance, (b) avoid further delinquencies, and (c) reasonably assure completion of the contract without loss to the Government. (See also, § 82.93-3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performances so long as they are disputed.

#### § 82.93-5 Fair value of undelivered work.

In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (§ 82.79-1(c)(v) or § 82.79-2(c)(vi)) the principles stated in § 82.92 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analyst services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in §§ 82.93-2 and 82.93-4. This fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also § 82.95-1.

#### § 82.93-6 Erroneous cost estimates.

When liquidation percentages (§§ 82.79-1(b) and 82.79-2(b)) lower than those called for by § 82.81-1 are established pursuant to § 82.81-2, it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish liquidation rates. In such cases (§§ 82.79-1(c)(vi) and 82.79-2(c)(iv)) appropriate increase of the liquidation percentage will be necessary to adjust for any under-liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of §§ 82.79-1(a)(3) or 82.79-2(a)(3), and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though § 82.81-2 has not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (§ 82.79-2) or any limited cost base (§ 82.80-5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

#### § 82.94 Government title.

Since the clauses in § 82.79 give the Government title to all of the materials, work in process, and finished goods under contracts after the making of progress payments thereon, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances.

The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

#### § 82.94-1 Loss, theft, destruction, or damage.

Sections 82.79-1(e) and 82.79-2(e) are not intended to apply to normal spoilage. The risk of loss as to property affected by the progress payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payment clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. See, however, § 82.79-1(c)(v) and 82.79-2(c)(vi), as to future payments on the contract after such loss, damage, theft, or destruction.

#### § 82.94-2 Government-furnished property.

Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of the Progress Payment clause (§§ 82.79-1(d) or 82.79-2(d)). Property to which the Government has acquired title solely pursuant to the Progress Payment clause is not subject to appendixes B and C (§§ 30.2 and 30.3 of this chapter).

#### § 82.94-3 Special tooling.

When the contractor furnishes special tooling, as defined in § 13.101-5, pursuant to a special tooling clause (e.g., § 13.504 of this chapter), and such special tooling is not to be delivered to the Government as an end item under the

contract, the handling and disposition of such special tooling will be governed by the special tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

**§ 82.94-4 Termination for convenience of the government.**

After the giving of notice of termination under contract provision for Termination for the Convenience of the Government, the property to which the Government has title pursuant to the Progress Payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the progress payment clause of the contract.

**§ 82.94-5 Scrap; excess property.**

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the progress payment clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the progress payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all its obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the termination clause or the special tooling clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and

generally accepted accounting principles and practices, and thus outside the scope of the progress payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

**§ 82.95 Consideration for progress payments, awards.**

When a progress payment clause is included at the inception of a contract, no separate consideration is charged for the Progress Payment clause, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments (other than any agreed discount for prompt payment) by reason of the making of progress payments. The worth of the Progress Payment clause to the contractor is expected to be reflected in one or both of (a) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (b) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

**§ 82.96 Amendments to provide progress payments.**

There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the contract was entered into without progress payment provision. However, cases do occur (a) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over six months (§ 82.72), or (b) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (§ 82.74). These cases may arise from occurrences such as (1) uncertainties or errors in specifications, (2) contract change notices, (3) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (4) stretch-outs or stop-work orders, (5) performance difficulties of subcontractors or suppliers, and (6) causes beyond the control and without the fault or negligence of the contractor, of the kinds mentioned in § 8.707(c) of this chapter. In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate conditions under which progress payments would have been properly provided in conformity with this part at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this

connection, see particularly §§ 82.15, 82.17, 82.18, 82.19, 82.20, 82.23, 82.23-1, and 82.97.

**§ 82.97 Consideration for amendments providing for progress payments.**

Contracts may not be modified except in the interest of the Government. Contracts which do not provide for progress payments may be amended (§ 82.85-5) to provide for progress payments only when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price of a contract not providing for progress payments, it is fair to expect elimination of the applicable portion of that element of the price when progress payments are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in value as nearly as practically ascertainable the amount by which the contract price would have been smaller if a Progress Payment clause had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (a) the amounts of progress payments expected to be outstanding for estimated periods of time, (b) the cost of equivalent working funds to the contractor, and (c) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreements by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. See § 82.96. This consideration should be for the progress payment amendment, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments after the progress payment amendment (other than any agreed discount for prompt payment) by reason of the making of progress payments.

G. C. BANNERMAN,  
Director for Procurement Policy,  
Office of Assistant Secretary  
of Defense (Supply and Logistics).

OCTOBER 20, 1959.

[F.R. Doc. 59-8961; Filed, Oct. 22, 1959; 8:48 a.m.]

## Chapter VII—Department of the Air Force

### PART 800—DEPARTMENT OF THE AIR FORCE SEAL

A new Part 800 is added as follows:

Sec.	Description.
800.1	Use.
800.2	Coat of arms.
800.3	Official drawings.

**AUTHORITY:** §§ 800.1 to 800.4 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

**SOURCE:** AFR 11-10, Sept. 23, 1959.

#### § 800.1 Description.

The Air Force Seal, established by Executive Order 9902, November 5, 1947, is the impression used on official documents and records of the Department of the Air Force.

(a) The Coat of Arms, in the center portion of the Seal, consists of two components:

(1) The Crest includes the eagle, cloud formation, and heraldic wreath. The American bald eagle symbolizes the United States and its airpower, while the wreath beneath the eagle, composed of six alternate folds of metal and color, repeats the principal metal and color used in the Shield, white (representing silver) and light blue. The cloud formation behind the eagle depicts the creation of a new firmament—the Department of the Air Force.

(2) The Shield, immediately below the eagle, is divided horizontally into two parts by a nebuly line representing clouds. The top portion of the shield bears the heraldic thunderbolt, which portrays striking power through the medium of air.

(b) The 13 encircling stars represent the original 13 colonies.

(c) Roman numerals beneath the shield indicate 1947, the year the Department of the Air Force was established.

(d) The band encircling the whole design bears the inscriptions "Department of the Air Force" and "United States of America."

(e) The official Air Force colors, ultramarine blue and golden yellow, are used in the Seal. Ultramarine blue is used for the circular background of the Seal, while the upper part of the Shield of the Coat of Arms is light blue, representing the sky. The lower part of the Seal is white, representing the heraldic metal silver. The thunderbolt is golden yellow with flames in natural color. Alternate twists of white and light blue make up the wreath of the crest, while the eagle and cloud are in their natural colors. The 13 stars are white, and the Roman numerals golden yellow. White, edged in golden yellow with black letters, is used on the encircling band.

#### § 800.2 Use.

(a) *Official policy.* (1) Use of the Seal or any part thereof is permitted only as approved by the Department of the Air Force. Falsely making, forging, counterfeiting, mutilating, or altering the Seal, or knowingly using or possessing with fraudulent intent any such altered Seal, is punishable by law (62 Stat. 714; 18 U.S.C. 506).

(2) Display of the Seal as a wall plaque is authorized by museums, military societies, and governmental institutions, when specifically approved by Hq USAF.

When use of the entire Seal or any part thereof is desired, request for approval will be forwarded to Hq USAF (AFPMP-12-C), Washington 25, D.C.

(b) *Unauthorized uses.* The Seal will not be used:

(1) On souvenir or novelty items of an expendable nature.

(2) On toys or commercial gifts and premiums.

(3) As a letterhead design on stationery.

(4) On menus, matchbook covers, sugar envelopes, calendars, and similar items.

(5) To adorn civilian clothing.

(6) On membership cards of military or quasi-military clubs, societies, etc.

(7) On athletic clothing and equipment.

(8) On any article which may discredit the Seal or reflect unfavorably upon the Department of the Air Force.

#### § 800.3 Coat of arms.

The Coat of Arms appears in two distinctive styles. Authorized uses of the Coat of Arms are set forth in paragraph (a) of this section.

(a) Coat of Arms, with or without encircling stars (in black and white, color, monochrome reproduction, pictorial or sculptured relief) may be used for ornamentation, for nonofficial use, on articles of jewelry, such as watches, rings, tie clasps, cuff links, bracelets, cigarette lighters, and similar articles where use of the Coat of Arms is in good taste and appropriate to the occasion.

(b) Use of the Coat of Arms in instances set forth in paragraph (a) of this section must be specifically approved by Hq USAF (AFPMP-12-C), Washington 25, D.C. When Hq USAF approves use of the Coat of Arms for nonofficial purposes, it will do so only with the understanding that such usage in no way reflects Air Force endorsement of the product involved.

#### § 800.4 Official drawings.

Official drawings of the Seal or any part thereof required for reproduction purposes may be obtained from Hq USAF (AFPMP-12-C), Washington 25, D.C.



[SEAL] CHARLES M. McDERMOTT,  
Colonel, U.S. Air Force, Deputy  
Director of Administrative  
Services.

[F.R. Doc. 59-8963; Filed, Oct. 22, 1959;  
8:48 a.m.]

## Title 4—ACCOUNTS

### Chapter I—General Accounting Office

#### SUBCHAPTER D—TRANSPORTATION

[Transmittal Sheets 5-4 and 5-5, Title 5, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies]

#### PART 51—PASSENGER TRANSPORTATION SERVICE FOR THE ACCOUNT OF THE UNITED STATES

#### PART 52—FREIGHT TRANSPORTATION SERVICES FURNISHED FOR THE ACCOUNT OF THE UNITED STATES

#### PART 53—CLAIMS BY THE UNITED STATES RELATING TO TRANSPORTATION SERVICES

#### PART 54—CLAIMS AGAINST THE UNITED STATES RELATING TO TRANSPORTATION SERVICES

#### Miscellaneous Amendments

1. Section 51.2 is changed to read:

#### § 51.2 Applicability.

The regulations in this part are applicable to all passenger transportation services, domestic, foreign, and international, and United States of America Transportation Requests, SF 1169, should be utilized to procure such services except as otherwise provided herein or as specifically authorized in writing by the Comptroller General of the United States.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

2. Section 51.9 is changed to read:

#### § 51.9 Unused ticket redemption form.

SF 1170, Redemption of Unused Tickets, is available in either a four-part or

a five-part, snapout, carbonized set consisting of an original and either three or four copies. The original and the last copy are on punched card stock and the other copies are on white paper stock. The agency name and address will be preprinted on the form when there is volume use and arrangements therefor are made in advance with the General Services Administration.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

3. Section 51.10 is changed to read:

**§ 51.10 Passenger billing voucher forms.**

The original of Public Voucher for Transportation of Passengers, SF 1171, is printed on white paper and is 8½ by 14 inches over-all including a perforated coupon, 8½ by 3¾ inches, at the bottom of the form. Carriers may request approval of proposed changes in format to conform to machine billing. SF 1171A is printed on yellow paper in the same size as the original without the perforated coupon.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

4. Section 51.13 is changed to read:

**§ 51.16 Quantity ticket purchases.**

When there is a continuing substantial volume of individual travel via the same mode and class of transportation between one origin and one destination and each one-way single fare does not exceed \$5.00, written application from an agency or department for continuing permission, not heretofore granted, to use transportation requests to procure a group of one-way or round-trip tickets for use within any one 30-day period of a fiscal year will be given consideration by the General Accounting Office. The application shall include proposed procedures and requirements under which the interests of the United States will be adequately safeguarded and should be addressed to the Director of the Transportation Division.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

5. Section 51.18 is changed to read:

**§ 51.18 Joint procurement of rail transportation and accommodations.**

SF 1169 is designed to permit, and should be used for, the joint procurement from rail carriers of transportation and accommodations by the issuance of but one document. However, when such issuance is neither feasible nor practical, because of circumstances involved, the request may be issued for the separate procurement of rail transportation or sleeping or parlor car accommodations. Whenever a transportation request is issued to procure sleeping or parlor car accommodations only, including those accommodations provided by the Pullman Company, it should be drawn on the rail carrier that will issue the sleeping or parlor car tickets with this exception: When the transportation

request is to be presented on the train for Pullman Company accommodations, it should be drawn on the Pullman Company.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

6. Section 51.19 is amended to read:

**§ 51.19 Stopovers.**

When a traveler is obliged to make one or more stops to conduct official business, the use of a through ticket with stopover privileges, which ticket may be obtained in exchange for only one transportation request, frequently results in a saving to the Government. In any event, each stopover on official business must be specifically identified as such on the transportation request when (a) travel is by domestic airlines; (b) sleeping or parlor car accommodations are used; or (c) excess baggage services via air are involved.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

7. Section 51.22 is amended to read as follows:

**§ 51.22 Unauthorized services.**

Transportation requests shall not be issued for personal transportation services, or to include at an additional cost unauthorized services, or to obtain transportation services exceeding those authorized under the applicable travel authority or regulations, such as extra-fare trains or planes, stopovers which increase the cost of passage, higher-priced indirect routings, etc. When the traveler desires such unauthorized services the additional cost thereof (including the U.S. Government transportation tax) must be paid in cash by the traveler and collected by the carrier at the time the transportation requests covering the authorized services or accommodations is exchanged for tickets.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

8. Section 51.25 is amended to read as follows:

**§ 51.25 Tenders.**

Tenders or quotations of special rates, fares, charges, or concessions for common or contract carrier passenger transportation services, including those made under section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22, shall be reduced to writing and promptly transmitted by administrative agencies or the negotiating agency directly to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

9. Section 51.37 is amended to read:

**§ 51.37 Joint issuances of rail and sleeping or parlor car tickets.**

When a single transportation request is presented for rail transportation and sleeping or parlor car accommodations, both rail and sleeping or parlor car

tickets will be issued by ticket agents; however the issuance will be subject to the exceptions and qualifications set forth in §§ 51.38 through 51.42.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

10. Section 51.38 is amended to read:

**§ 51.38 Issuance and use of sleeping or parlor car tickets when accommodations are not assigned.**

When the ticket agent at the point where travel begins is unable to assign space because:

(a) Sleeping or parlor car accommodations are not to begin at the initial point of rail travel and advance reservations cannot be obtained;

(b) Sleeping or parlor car service is authorized from the initial point of rail travel, but the space assignment at such point has been exhausted; or

(c) Round trip sleeping or parlor car service is authorized and accommodations cannot be obtained in advance for the return trip; he will issue a sleeping or parlor car ticket (or tickets) endorsed to show the type and quantity of accommodations and the points between which accommodations are authorized in accordance with transportation request issuance. In these situations there is no guarantee that the authorized accommodations will be available; thus, it is incumbent upon travelers holding such tickets to immediately attempt to obtain actual space assignments upon arrival at points where the accommodations are to be furnished. When the accommodations or transportation services supplied are of a character different from or a value lesser than those authorized by the tickets, the traveler should endeavor to secure a written acknowledgment of that fact from the local ticket agent or conductor assigning the space and submit it promptly with a written report of the facts and circumstances to the appropriate designated office of the administrative agency. Also, this report should identify the transportation request used to procure the transportation involved and should be accompanied by any unused tickets or transportation coupons in the traveler's possession. In this connection, attention is directed to the fact that SF 1173, Report of Change in Passenger Transportation Service, is available for use, if desired, in submitting reports to the administrative agency.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

11. Section 51.39 is amended to read:

**§ 51.39 Use of Accommodation Authority form in lieu of sleeping or parlor car ticket.**

When ticket agents are supplied with railroad tickets but not supplied with sleeping or parlor car tickets, traveler(s) will be issued rail tickets and furnished a uniform prenumbered "Accommodation Authority" form covering the accommodations authorized by the transportation request. This form will be honored by sleeping or parlor car conductors and handled in the same manner

as hereinafter outlined for parties of 15 or more.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49).

12. Section 51.40 is amended to read:

**§ 51.40 Use of Accommodation Authority form for parties of 15 or more when there is no car to car transfer en route.**

When parties of 15 or more are moving by rail in through sleeping car equipment, tickets will be issued for rail travel only and a uniform prenumbered "Accommodation Authority" form will be issued for sleeping car accommodations. This form, which is supplied by the rail carriers, will be prepared by the carrier's agent at the point of origin to show in the spaces provided, in conformity with the authorization of the related transportation request, all the required information, i.e., the name of the origin railroad; the symbol or main number, if any; the name of the traveler or person in charge of a group; the number of other passengers; the number and kind of accommodations; the points between which accommodations are to be furnished; the transportation request number; the rail ticket expiration date; the name of the issuing station; the date on which the form is issued; and the impression of the ticket dater stamp. The original copy of the "Accommodation Authority" form will be given to the traveler or person in charge of a group, who will present it to the sleeping car conductor (not the ticket agent) as authority for sleeping car accommodations. The sleeping car conductor will endorse on the back of the form over his signature the accommodations furnished; if such accommodations vary from the accommodations authorized, he will also state in writing the reason for such variation. After the "Accommodation Authority" form has also been signed by the traveler or person in charge of a group, the sleeping car conductor will lift it and the form will subsequently be used by the billing carrier to support its bill.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

13. A new section 51.40a is added, as follows:

**§ 51.40a Use of Accommodation Authority form for parties of 15 or more when there is a car to car transfer en route.**

When parties of 15 or more are moving by rail and it is necessary for them to transfer en route from one sleeping car to another, the "Accommodation Authority" form will be issued, prepared, and delivered to the traveler or person in charge of a group as outlined in § 51.40. The traveler or person in charge of a group will present it to the sleeping car conductor at the point of origin, who will endorse on the back of the form over his signature, the accommodations furnished from the origin to the transfer point, and, if such accommodations vary from the accommodations authorized,

he will state in writing the reason for such variation. After the traveler or person in charge of a group has signed the "Accommodation Authority" form, the sleeping car conductor will lift it and furnish the traveler or person in charge of a group a transfer check which will be endorsed to show the number of the "Accommodation Authority" form, the issuing railroad, the point of origin, the final destination, and the accommodations authorized by the "Accommodation Authority" form. The conductor will also endorse on the reverse side of the "Accommodation Authority" form the form and number of the transfer check. The traveler or person in charge of a group will present the transfer check to the sleeping car conductor at the transfer point, who will endorse on the back of it over his signature the accommodations furnished; if such accommodations vary from the accommodations authorized, he will also state in writing the reason for such variation. After the transfer check has been signed by the traveler or person in charge of a group, the sleeping car conductor will lift it and the form will subsequently be used by the billing carrier to support its bill. If a second transfer en route is necessary a second transfer check will be prepared, issued, and used in the same manner as the first; the reverse of such transfer check will be endorsed to show the issuing railroad and the form and number of the first transfer check.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

14. Section 51.41 is amended to read:

**§ 51.41 Honoring of transportation request on train for rail and sleeping or parlor car services.**

When there is no ticket agent on duty, necessitating that rail and sleeping or parlor car tickets be obtained at the nearest available point en route, rail and sleeping or parlor car conductors will (a) honor the transportation request to the first station en route where rail and sleeping or parlor car tickets can be obtained, (b) endorse on the back of the request over their signatures the points between which the request was honored without tickets and (c) secure the signature of the traveler below the endorsement. The ticket agent at such en route station in exchange for the transportation request, will issue rail and sleeping or parlor car tickets from the initial points of service as authorized on the transportation request.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

15. Section 51.42 is amended to read:

**§ 51.42 Honoring of transportation request on train for sleeping or parlor car only.**

When a transportation request is presented on the train for sleeping or parlor car accommodations only the request will be honored by the sleeping or parlor car conductor.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

16. Paragraphs (c) and (d) of § 51.44 are amended to read:

**§ 51.44 Portion of transportation request reserved for carrier's use.**

\* \* \* \* \*

(c) In the "Accommod." space under the heading "Agent's Value," the ticket agent will enter the cost of accommodations furnished in accordance with the transportation request authorization, such as berths, roomettes, parlor car seats (whether Pullman or railroad), coach reserved seats, or air berth accommodations. Ordinarily, entries will not be made in this space by bus and water carriers (except when the stateroom charge is separate) since under their existing tariff structures there is no distinction between charges for transportation and charges for other related services.

(d) In the "Transp." and "Accommod." spaces under "Auditor's Value," entries by carriers' audit offices, with the exception of rail carriers, will cover the same charges as specified above for similarly designated spaces under "Agent's Value." Railroad audit offices, however, may enter under "Transp." all of the charges accruing for rail services and under "Accommod." all of the charges for accommodations. In some instances this will result in identical items and amounts being included by the ticket agent under "Accommod." and by the auditor under "Transp."

17. Section 51.43 is amended to read:

**§ 51.43 Use of "Redemption of Unused Tickets" form.**

Unused tickets, exchange orders, etc., and portions thereof, shall be processed to carriers for refund by means of SF 1170, Redemption of Unused Tickets. A separate SF 1170 must be used for each transportation request, though more than one ticket or adjustment transaction may be listed on that form. In no case should more than one transportation request be covered on one SF 1170. When the refund request is based on the honoring of first-class rail tickets in coach service and unused Pullman Company sleeping car or parlor car ticket(s) is involved the SF 1170 being sent to the rail carrier should be annotated to show that a separate refund adjustment is being requested from the Pullman Company; the SF 1170 being sent to the Pullman Company also should be annotated to show that application for refund has been made to the rail carrier. Refund requests involving unused Pullman Company tickets or accommodations shall be addressed to the General Office of the Pullman Company notwithstanding such accommodations were procured jointly with the related rail transportation on a single transportation request drawn on, billed by, and paid to a rail carrier. However, if the unused sleeping car or parlor car tickets are on a rail carrier's ticket stock, the SF 1170 should be forwarded to such rail carrier.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

18. Section 51.49 is amended to read:

**§ 51.49 Processing of "Redemption of Unused Tickets" form by Government agencies.**

SF 1170, which is available in a four-part set or a five-part set, shall be processed by the agencies of the Government as follows:

(a) All copies shall be properly and completely executed as to the required detail; if unused tickets or portions thereof are not involved then the essential facts on which the refund claim is based should be included on SF 1170;

(b) The original and the triplicate copy shall be forwarded to the carrier together with any involved unused tickets or portions thereof;

(c) The duplicate copy shall be forwarded to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C., at the same time the original and the triplicate copy are forwarded to the carrier; and

(d) The quadruplicate copy and, if a five-part form is used, the quintuplicate copy shall be retained by the administrative office for internal processing after receipt of the refund or pertinent advice from the carrier with respect to the request for refund.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

19. Section 51.52 is amended to read:

**§ 51.52 Prohibiting of rebilling adjustment by carriers or Government agencies and reporting of failure to receive refund.**

Carriers should make prompt refund of monies due in connection with items listed on SF 1170 even though the bill covering charges for the related transportation request has not been submitted or paid. Connectively, carrier bills for the related charges on transportation requests will not be subjected administratively to deduction, revision, or rebilling to adjust such items, except as provided in the next paragraph. However, should a carrier fail to make refund or to furnish satisfactory reasons why no refund is due, within 3 months from the time application is made, or refuse to make an adjustment for unused transportation, the Government agency involved shall refer the matter to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C., for appropriate action, transmitting therewith a copy of the pertinent SF 1170 and all related correspondence.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

20. A new undesignated center head and a new § 51.59a are added, following § 51.59, to read as follows:

**LOST OR STOLEN TICKETS**

**§ 51.59a Lost or stolen tickets.**

Travelers or other accountable persons are responsible for the custody of tickets and other transportation documents received in exchange for transportation requests or other procuring instruments, and the failure to safeguard such documents to the extent that they are used

by unauthorized persons may result in personal liability to the traveler or other accountable person. Administrative regulations issued in accordance with § 51.68 should caution travelers or other accountable persons in this respect.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

21. Section 51.62 is revised to read:

**§ 51.62 Factual support of charges billed.**

In all instances when information or facts additional to those shown on the transportation request or other authorized procurement document are necessary to support or explain charges billed, documentary evidence of such facts shall bear a reference to the serial number of the transportation request or other document involved, be associated therewith, and made a part of the related billing record (SF 1171). Original signed certifications or affidavits, section 22 quotations, charter orders, air ferry or live mileage supports, excess baggage coupons or similar documentary evidence showing gross and net weights of the baggage carried, bus deadhead mileage supports, "Accommodation Authority" forms, transfer checks, authorizations, etc., are in this category and, where required, must be furnished in support of billings.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

22. Paragraph (a) of § 51.65 is changed to read:

**§ 51.65 Execution of carrier billing forms.**

(a) SF 1171 shall show the complete serial number of each billed transportation request and opposite thereto the applicable charges; those for transportation in the column headed "Transportation" and those for accommodations, such as Pullman, air berth, or stateroom in the column headed "Accommodations." Entries in these respective columns should correspond with the totals shown under "Auditor's Value" in the "For Carriers Use Only" area on each listed SF 1169, with a separate total for each column and a grand total shown in the designated spaces. SF 1171 is designed to permit a machine tabular listing of transportation requests though such is not a requirement. Carriers are requested to make a special effort, when the charges are to be billed to the same office, to include as many transportation requests as may be itemized on one SF 1171. Such practice will reduce the number of billings as well as the number of Government checks issued, and materially facilitate payment and audit processes.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

23. Section 51.67 is amended to read:

**§ 51.67 Transmission of carrier bills with supporting data.**

Transportation requests, together with appropriately referenced supporting docu-

mentation, should be placed in one envelope by the carrier and forwarded with the related SF 1171 for payment. Administrative offices are requested not to fold, staple, spindle, or mutilate transportation requests and should insure that transportation requests and supporting material are kept together and transmitted in an envelope that is securely attached to the related SF 1171.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

24. A new § 51.67a is added as follows:

**§ 51.67a Cross reference on billings for additional or supplemental service.**

Vouchers covering payments for transportation requests that are issued to extend or supplement the services covered by other transportation requests which have been paid in other vouchers, must be endorsed by the paying office or the administrative agency to show the D.O. Voucher number, date of payment, and disbursing office symbol number of the prior payment.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

25. That portion of § 52.2 which follows the list of standard forms is amended to read:

**§ 52.2 Standard forms for all shipments except those accorded transit privileges.**

\* \* \* \* \*

The size of the above-prescribed forms will be 8½ by 11 inches and the original bill of lading, the freight waybill—carrier's copy, and the corresponding continuation sheets will be printed on white paper. The memorandum bill of lading and its continuation sheet will be printed on yellow paper and the shipping order and its continuation sheet on pink paper.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

26. That portion of § 52.4(a) which follows the list of standard forms is amended to read:

**§ 52.4 Standard forms for shipments accorded transit privileges.**

\* \* \* \* \*

The size of the above-prescribed forms will be 8½ x 14 inches and the original transit bill of lading, the transit freight waybill—original, and the transit freight waybill—carriers copy will be printed on white paper. The memorandum transit bill of lading will be printed on yellow paper and the transit shipping order on pink paper.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

27. Sections 52.5 is amended to read:

**§ 52.5 Overprinting.**

No departure from the exact specifications of the standard bill of lading forms herein prescribed will be permitted, but this will not be construed to prevent a department or establishment from ordering printed on the forms used by it,

when more economical and advantageous to do so, the name of the department or establishment, name of bureau or service, place of issue, title of issuing officer, and designation of appropriation or fund chargeable.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 31 U.S.C. 49)

28. Section 52.6 is amended to read:

**§ 52.6 Accountability and control.**

Appropriate accountability records must be maintained by the departments and establishments of the United States Government for the purpose of controlling the stock of printed bills of lading on hand and for fixing accountability upon the employees responsible for their issuance and use. To facilitate such control, the bill of lading forms will be serially numbered at the time of manufacture. An alphabetical-numerical sequence will be followed in numbering these forms. SF 1103 assemblies (includes SFs 1003a, 1104, 1105, and 1106) will start with the number A0,000,001 and will continue through A9,999,999 after which the letter symbol will change to B, thence C, etc. SF 1131 assemblies (includes SFs 1131a, 1132, 1133, and 1134) will start with the number AT 000,001 and continue through AT 999,999, after which the letter symbols will change to BT, thence CT, etc. Departmental numbering, coding, or symbolization will not be permitted.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

29. Section 52.7 is amended to read:

**§ 52.7 Description and distribution.**

(a) U.S. Government Bill of Lading Forms and U.S. Government Transit Bill of Lading Forms will be arranged in sets of seven and nine parts each. These sets, all parts of which will be prepared simultaneously, will consist, respectively, in the exact order named, of:

(1) The original bill of lading, which contains the terms and conditions of the contract of transportation, the description of the articles comprising the shipment, and evidence of delivery, and which will, except as hereinafter provided, be used as supporting evidence for the voucher covering the transportation charges involved;

(2) The shipping order, which is to be retained by the carrier's agent at shipping point;

(3) The freight waybill—original, which is to accompany the shipment or to be otherwise conveyed to destination in accordance with instructions of the carrier;

(4) The freight waybill—carrier's copy, which is to be disposed of in accordance with instructions of the carrier; and

(5) Three or five copies of the memorandum copy of the bill of lading, which are to be retained by the shipper for administrative purposes.

(b) U.S. Government Bill of Lading Continuation Forms also will be arranged in seven- and nine-part sets consisting, in the following order, of SFs 1109, 1110, 1111, 1112, and three or five 1109a's.

(c) Separate supplies of the memorandum forms, SFs 1003a, 1109a, and 1131a are available for addition to the respective seven- and nine-part sets when additional copies are required for administrative purposes; however, in the interest of economy, the number of such memorandum copies should be kept at a minimum.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

30. Section 52.8 is amended to read:

**§ 52.8 Procedures for preparing bill of lading forms.**

In preparing the sets of Government bill of lading forms, careful attention should be given to all instructions and details in arrangements, especially to the boxed section headed "For use of Destination Carrier Only," which must not be covered by marks or writing since it is for the sole use of the accounting officer of the destination carrier who inserts therein the proper class, rates, and charges. This boxed section is not ruled on the memorandum copies of the bill of lading form and the space thereon should be used by the issuing officer for showing the estimated transportation charges and for such accounting classifications as may be administratively required. The issuing officer must, in every case, sign the "Certificate of Issuing Officer" regardless of whether the bill of lading is to be used by a contractor as shipper. Carbon impression signatures on the shipping order and other forms will be acceptable. When the bill of lading is to be used by a contractor as shipper, it is particularly important that the issuing officer fill in above his signature the contract or purchase order number, the date thereof, and the f.o.b. point named in such contract or purchase order, since in the absence of such data on bills of lading the carrier may refuse to accept the shipment from a contractor or shipper. The statement concerning pick-up or trap car service at origin must be initialed by the shipper or shipper's agent.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

31. Section 52.9 is amended to read:

**§ 52.9 Action of the carrier's agent and disposition of the U.S. Government bill of lading forms.**

Upon delivery of Government property to a carrier for shipment, the agent of the initial carrier should insert the name of his company in the space provided therefor in the lower left-hand portion of the original bill of lading, together with his signature and the date the shipment was received, and he should verify that the statement made on the original bill of lading—that carrier furnished pick-up or trap car service at origin—is in accord with the facts and that such statement contained on the original bill of lading is the same as that contained on the shipping order. The shipping order, the freight waybill—original, and the freight waybill—carrier's copy will be surrendered to the agent of the initial carrier at the time the shipment is accepted and the bill of lading

is receipted by its agent, at which time the original bill of lading must be immediately forwarded by the shipper (issuing officer or contractor) to the consignee, in order that it will be in his possession upon arrival of the shipment at destination, when it will be promptly receipted and surrendered by him to the last carrier for billing. However, in those instances in which it is apparent to the shipper that the mailing of the original bill of lading to the consignee will result in arrival of the shipment prior to the arrival of the original bill of lading (as, for example, in cases of single-line rail hauls, when shipping by air or by railway express, and in many cases of shipment by highway, etc.), or in the case of all shipments of Government property, if it is administratively determined that some substantial interest of the Government will be served thereby; the original bill of lading may, by agreement with the carrier receiving such shipments, be surrendered to said carrier, or its agent, to accompany the shipment or, at the discretion of the carrier, to be transmitted to destination by such other means as the carrier may elect. Whenever the original bill of lading is surrendered to a carrier with the shipment, the certificate which appears on the bill of lading, "Initial Carrier's Agent, by Signature Below, Certifies He Received the Original Bill of Lading ☐ Yes (Indicate by Check)," shall be checked to so indicate by the carrier's agent who signs for the shipment. In such cases one memorandum copy of the bill of lading will be retained by the shipper (issuing officer) as an office record, and one memorandum copy, so certified, must be immediately forwarded by him to the consignee. Whenever the bill of lading is used by a contractor as shipper, one memorandum copy thereof, so certified, will be retained by the contractor, and memorandum copies, each so certified, must be promptly forwarded by him to the issuing officer and to the consignee.

32. Section 52.10 is amended to read:

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

**§ 52.10 Procedures for use and disposition of temporary receipt.**

The use by the consignee of the Temporary Receipt in Lieu of U.S. Government Bill of Lading, SF 1107, should be restricted to instances in which the receipt of the original U.S. Government Bill of Lading is delayed, immediate delivery of the shipment is necessary, and this form of receipt is demanded by the carrier. Under no circumstances will transportation charges be paid or certified for payment based upon a temporary receipt. In order that payment of the transportation charges may be made without undue delay, the person responsible for issuing the temporary receipt must maintain a record of each such document issued, and must replace such temporary receipt with the original U.S. Government Bill of Lading as soon as such document is received or with a certificate in lieu of lost bill of lading when such document is used. The temporary receipt should then be marked canceled,

and the number of the U.S. Government Bill of Lading or the certificate in lieu of lost bill of lading which replaced it should be noted thereon. The canceled temporary receipt then should be filed with the records of the office responsible for its issuance.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

**§ 52.15 [Rescission]**

33. Section 52.15 is rescinded.

34. Section 52.18 is amended to read:

**§ 52.18 Original bill of lading located after settlement of bill—Action to be taken.**

If the original bill of lading is located after settlement is made on the certificate in lieu of lost bill of lading, it will be forwarded with appropriate advice to the administrative office concerned, there to be properly voided and inscribed with the disbursing office symbol number, the D.O. Voucher number (or the General Accounting Office certificate of settlement number), and the date paid. The voided original bill of lading will then be transmitted to the General Accounting Office.

(Sec. 411, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

35. Section 52.22 is amended to read:

**§ 52.22 Lost original commercial bills of lading subsequently recovered.**

It is to be understood that, if the lost original commercial bill of lading or lost commercial express receipt is located subsequent to the conversion of the carrier's "Shipping Order," the carrier's "Freight Waybill" (A.A.R. Standard Form No. AD-129-Part 3), or the Railway Express Agency "Delivery Sheet" to a Government bill of lading, it will be forwarded with appropriate advice to the administrative office concerned. There, after payment has been effected on the Government bill of lading prepared from the commercial documents, the recovered original commercial bill of lading or commercial express receipt will be properly voided and inscribed with the disbursing office symbol number, the D.O. Voucher number (or the General Accounting Office certificate of settlement number), and the date paid; it will then be transmitted to the General Accounting Office.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

36. Section 52.24 is amended to read:

**§ 52.24 Size and color.**

The original Public Voucher for Transportation Charges, SF 1113, should be printed on white paper and be 8½ by 11 inches in size with the addition of a perforated coupon, 8½ by 3½ inches, at the bottom of the form, to be used in transmitting checks in payment of the voucher. The memorandum of the voucher, SF 1113a, should be printed on yellow paper in the same size as the original without the perforated coupon.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

37. Section 52.26 is amended to read:

**§ 52.26 Preparation by carriers of Public Voucher for Transportation Charges.**

(a) The arrangement of the voucher form requires the listing of the complete serial number and amount of each sub-voucher (bill of lading, etc.); it does not provide for descriptive details of the service rendered. Except as provided in § 52.33 carriers are requested to make a special effort, when the charges are to be billed to the same office, to include as many subvouchers as possible on each voucher form, since such practice will materially reduce the number of forms used and the number of Government checks issued, and will expedite the payment and audit of transportation charges.

(b) In the preparation of SF 1113, the "Payee's Certificate" must be properly executed.

(c) In the interest of economy the carrier will furnish to the department or establishment billed only one memorandum copy, SF 1113a, with each voucher form unless specifically authorized in advance by the General Accounting Office to furnish extra copies.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

38. Section 52.28 is amended to read:

**§ 52.28 Support for accessorial or special charges.**

In connection with its audit activities, the General Accounting Office has before it only what the carrier and the administrative agency have submitted as the record upon which the carrier was paid. There can be no knowledge of services furnished which vary from those ordered on the processing documents. In all instances where additional information or facts are necessary to support higher charges because of accessorial or special services ordered and furnished incident to the line-haul transportation, the U.S. Government Bill of Lading, SF 1103, shall be indorsed to show the name of the carrier upon which the request was made and the kind and scope of the special services ordered. This indorsement may be placed on the face of the bill of lading under the "Description of Articles" or in the block reserved for "Marks," if space is available, or in the space provided on the reverse side of the bill of lading for "Special Services Ordered," and shall be signed by or for the person who ordered the services. However, if such an indorsement is impractical, the same information may be set forth in a statement bearing the number of the covering bill of lading which shall be signed by or for the person who ordered the services, and, if possible, attached to the bill of lading. If the bill of lading is not available, the original and one copy of the statement shall be surrendered to the carrier from which the services were ordered, the original for transmittal to the last line-haul carrier and presentation in connection with the bill for line-haul transportation charges. Where accessorial or special services are shown

as ordered but were not furnished, the bill of lading shall be so annotated.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

39. The undesignated center head preceding § 52.29 is changed to read: "Pick-up, Delivery or Trap Car Services".

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

40. Section 52.29 is amended to read:

**§ 52.29 Completion of statement concerning pick-up, delivery, or trap car services.**

The U.S. Government Bill of Lading provides for showing whether the carrier furnished pick-up, delivery, or trap car service. In certain instances, tariffs covering pick-up, delivery, or trap car service provide for the assessment of charges therefor in addition to line-haul charges. Accordingly, when pick-up, delivery, or trap car service is performed by the carrier at the request of the shipper or consignee in connection with a Less-than-Carload or any Any Quantity rail shipment, or on shipments by other modes of transportation when a charge is to be made for the pick-up and/or delivery service, the Government bill of lading and available copies should be completed to show the authorized service was requested of and furnished by the carrier. Such statements should be signed by or for the person(s) who ordered the services at origin or destination.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

41. Section 52.32 is amended to read:

**§ 52.32 Free or surrendered Government bill of lading.**

Where the transportation charges to the transit station equal or exceed the through transportation charges plus the transit charge, the outbound bill of lading properly accomplished should be listed on and surrendered with a Public Voucher for Transportation Charges, SF 1113, bearing carrier's bill number, to the administrative office for which the service was performed, accompanied by the carrier's check for the amount, if any, due the United States. After the agency records have been annotated in conformity with its fiscal procedures, reference should be made on the surrendered or free bill of lading to the payment covering the inbound bill of lading by a citation to the involved D.O. voucher number, bureau voucher number (if any), date of payment, and the disbursing office symbol number. The SF 1113, together with the surrendered bill of lading and a notice of the refund, if any, should be forwarded to the Transportation Division of the General Accounting Office. Such bills should be transmitted separately from any other documents.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

42. Section 52.35 is amended to read:  
**§ 52.35 Tenders.**

Quotations or tenders made by or on behalf of common carriers for freight transportation rates or services, including those made under section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22, shall be reduced to writing and promptly transmitted by administrative agencies or the negotiating agency directly to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

43. A new undesignated center head and a new § 52.37 are added, following § 52.36, to read as follows:

#### VOLUNTARY REFUNDS BY CARRIERS

**§ 52.37 Voluntary refunds by carriers.**

Voluntary refunds (other than those covered in § 52.32) made by carriers to administrative offices to cover excess amounts billed and paid for freight or express services furnished should be reported by the administrative offices to the Transportation Division of the General Accounting Office. Each such report should include (a) a reference to each involved bill of lading and the amount refunded on each, (b) a citation to the related payment by reference to the involved D.O. voucher number, bureau voucher number (if any), date of payment, and the disbursing office symbol number, and (c) the name of the carrier and the carrier's bill number.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 309, 42 Stat. 25, 31 U.S.C. 49)

44. The headnote to § 53.1 and paragraph (b) of § 53.1 are revised to read as follows:

**§ 53.1 Examination of payments and initiation of collection action.**

\* \* \* \* \*

(b) *Requests for refund of amounts due the United States.* If it is determined that a carrier billed and was paid a sum in excess of that deemed properly due for the services rendered, the action taken depends on whether or not the excess payment, under applicable laws, is recoverable by deduction from any amount otherwise due the carrier. If it is, there is prepared a GAO Form 1003 setting forth in detail the basis of the difference established as to each affected bill of lading or transportation request and citing applicable tariff references and other data relied upon to support the statement of difference. GAO Forms 1003 are stated separately as to each carrier bill and are dispatched to the billing carrier. Carriers are requested to refund promptly the amounts due the United States. Checks should be made payable to the "U.S. General Accounting Office" and mailed directly to the U.S. General Accounting Office, Transportation Division, Washington 25, D.C.

If the amount determined due the United States is not recoverable by deduction under applicable laws, other

action is initiated, including, where appropriate, reports to the Department of Justice for the institution of other proceedings.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 4, 28 Stat. 206, 31 U.S.C. 93)

45. Section 53.2 is amended to read as follows:

**§ 53.2 Protests to statements of excess charges; GAO Forms 1003.**

While each GAO Form 1003 requests prompt refund of amounts determined to be due the United States, carriers may on occasion disagree in whole or in part with the amount claimed to be due. In such instances, a letter of protest may be submitted to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C., accompanied by a check for the amount considered to be properly due the United States. Protests must be submitted promptly; otherwise further collection proceedings will be instituted. It is not sufficient that a carrier merely protest in so many words; each protest should set forth fully the basis relied upon to support the carrier's position and there should be furnished originals or certified copies of any additional documents which are relied upon to further substantiate the protest. While prompt submission of a proper protest has the effect of deferring collection action, unsubstantiated protests or repetitious protests of the same item to which consideration has previously been accorded will be ineffective for that purpose. Upon receipt in the General Accounting Office, each letter of protest is acknowledged; when the matters involved have been fully considered, the carrier is advised of the action taken.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 4, 28 Stat. 206, 31 U.S.C. 93)

46. Paragraphs (c) and (d) of § 54.2 are amended to read:

**§ 54.2 Definition.**

(c) amounts additional to those originally billed and paid for the services furnished (freight bills for accessorial services such as switching, demurrage, handling, icing, etc., and passenger bills for excess baggage, switching charges, Pullman charges based on Accommodation Authority forms, etc., may be paid by departments and agencies when properly documented; such payments should include a citation to previous payments by reference to D.O. voucher number, date of payment and disbursing office symbol number); and

(d) amounts which are not administratively approved and paid within the applicable statutory period of years from the date right to payment accrued. (See § 54.6a).

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 305, 42 Stat. 24, 31 U.S.C. 71)

47. Section 54.6 is amended to read:

**§ 54.6 Where claims should be filed.**

Action generally will be expedited if claimants file their claims with the ad-

ministrative department or agency out of whose activities the claims arose. However, a claimant may file a claim direct with the Transportation Division, General Accounting Office, particularly if the applicable statutory period of limitation is about to expire. Further, transportation claims arising out of collections effected as a result of action by the General Accounting Office should be forwarded directly to the Transportation Division, U.S. General Accounting Office, Washington 25, D.C.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies sec. 305, 42 Stat. 24, 31 U.S.C. 71)

48. A new § 54.6a is added as follows:

**§ 54.6a Statutory limitations on filing claims in the General Accounting Office.**

(a) *Three year statute of limitations.* 49 U.S.C. 66 imposes a three-year limitation on the filing of claims cognizable by the General Accounting Office when such claims involve charges for transportation within the purview of that section. Claims in this category are those which involve transportation charges based upon tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board or which involve rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act, 49 U.S.C. 22. The filing of a claim with some other agency of the Government will not meet the requirements of this statute; the claim must be received in the General Accounting Office within three years after the date such claim first accrued.

(b) *Ten year statute of limitations.* 31 U.S.C. 71a(1) imposes a ten year limitation on the filing of claims cognizable by the General Accounting Office under 31 U.S.C. 71 and 236. This limitation applies to all claims involving charges for transportation other than those claims covered by 49 U.S.C. 66 (see paragraph (a) of this section). The filing of a claim with some other agency will not meet the requirements of this statute; the claim must be received in the General Accounting Office within ten years after the date such claim first accrued.

(Sec. 311, 42 Stat. 25, 31 U.S.C. 52. Interprets or applies secs. 1, 2, 54 Stat. 1061, 31 U.S.C. 71a, and sec. 2, 72 Stat. 860, 49 U.S.C. 66)

[SEAL]

JOSEPH CAMPBELL,  
*Comptroller General  
 of the United States.*

[F.R. Doc. 59-8962; Filed, Oct. 22, 1959;  
 8:48 a.m.]

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter 1—Civil Service Commission

#### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

##### Department of Commerce

Effective upon publication in the FEDERAL REGISTER, paragraph (j)(2) of § 6.112 is amended as set out below.

## § 6.112 Department of Commerce.

(j) *Office of the Assistant Secretary for International Affairs.* \* \* \*

(2) Not to exceed 25 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended, 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,  
*Executive Assistant.*

[F.R. Doc. 59-8966; Filed, Oct. 22, 1959; 8:49 a.m.]

## PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

### Department of Commerce

Effective upon publication in the FEDERAL REGISTER, the headnote and subparagraphs (1), (2), (3), and (4) of paragraph (c) of § 6.312 are revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,  
*Executive Assistant.*

[F.R. Doc. 59-8965; Filed, Oct. 22, 1959; 8:49 a.m.]

## PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

### Housing and Home Finance Agency

Effective upon publication in the FEDERAL REGISTER, subparagraphs (17), (18), (19), and (20) of paragraph (b) of § 6.342 are added as set out below.

#### § 6.342 Housing and Home Finance Agency.

(b) *Federal Housing Administration.* \* \* \*

(17) One Special Assistant for Home Mortgages.

(18) One Special Assistant for Rental Housing.

(19) One Special Assistant for Urban Renewal.

(20) One Special Assistant for Elderly Housing.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,  
*Executive Assistant.*

[F.R. Doc. 59-8967; Filed, Oct. 22, 1959; 8:49 a.m.]

## Title 6—AGRICULTURAL CREDIT

### Chapter III—Farmers Home Administration, Department of Agriculture

#### SUBCHAPTER B—FARM OWNERSHIP LOANS

[FHA Instruction 428.1]

### PART 331—POLICIES AND AUTHORITIES

#### Average Values of Farms; Colorado

On October 8, 1959, for the purposes of Title I of the Bankhead-Jones Farm Tenant Act, as amended, the average value of efficient family-type farm-management units for Gilpin County was determined to be \$50,000. Section 331.17, Title 6, Code of Federal Regulations, is hereby amended to include under the tabulations of average values for Colorado, Gilpin County with an average value of \$50,000. Gilpin County, Colorado, had not heretofore been included in said tabulations.

(Sec. 41, 50 Stat. 528, as amended; 7 U.S.C. 1015; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: October 19, 1959.

K. H. HANSEN,  
*Administrator,*  
*Farmers Home Administration.*

[F.R. Doc. 59-8952; Filed, Oct. 22, 1959; 8:47 a.m.]

#### SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

[FHA Instruction 465.1]

### PART 372—REAL ESTATE SECURITY

#### Execution of Severance Agreements

Section 372.6 in Title 6, Code of Federal Regulations (24 F.R. 2107), is amended to authorize County Supervisors to execute severance agreements in those cases in which a chattel lien is taken to secure a Farmers Home Administration loan made to purchase equipment which may become attached to real estate in those cases in which the Farmers Home Administration is a real estate lienholder, and to read as follows:

#### § 372.6 Severance agreements.

(a) When a borrower requests permission of FHA to obtain other financial assistance to construct or install farm facilities, such as grain storage, bulk milk tanks, and irrigation equipment, Form FHA-696 will be completed. The County Supervisor, if the transaction does not exceed \$1,000, and the State Director are each authorized to give FHA consent by executing Form FHA-696 and any necessary severance agreements if it is determined that (1) the facility to be constructed or installed is not in excess of the borrower's needs based on the normal production or requirements of the farm, and (2) the financing arrangements are sound and proper and will not

adversely affect the orderly payment of the FHA indebtedness or adversely affect the FHA's security position. The Attorney in Charge will be requested to prepare or review the severance agreement and, where necessary, issue closing instructions.

(b) The County Supervisor is authorized to execute severance agreements on behalf of the FHA as a real estate lienholder when such agreements are required by § 341.10(a) (8) of this chapter and by the State Director pursuant to § 342.3(p) of this chapter.

(R.S. 161, secs. 41, 6, 50 Stat. 528, as amended, 870, sec. 510, 63 Stat. 437, sec. 4, 64 Stat. 100, sec. 10, 68 Stat. 735; 5 U.S.C. 22, 7 U.S.C. 1015, 16 U.S.C. 590w, 42 U.S.C. 1480, 40 U.S.C. 442, 16 U.S.C. 590x-3. Order of Acting Sec. of Agric., 19 F.R. 74, 22 F.R. 8188)

Dated: October 19, 1959.

K. H. HANSEN,  
*Administrator,*  
*Farmers Home Administration.*

[F.R. Doc. 59-8953; Filed, Oct. 22, 1959; 8:47 a.m.]

## Title 7—AGRICULTURE

### Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

#### PART 984—WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

##### Grade and Size Regulations for Unshelled Walnuts

Pursuant to the provisions of Marketing Agreement No. 105, as amended, and Order No. 84, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, Oregon, and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), and on the basis of recommendations of the Walnut Control Board and other available information, it is hereby found that the amendment, as hereinafter prescribed, of the current administrative rules and regulations (Subpart—Administrative Rules and Regulations) will tend to effectuate the declared policy of the act.

Separate pack specifications (§ 984.403) for unshelled walnuts are now in use in District 1 (California) and District 2 (Oregon and Washington) of the area of production. The use of such specifications has resulted in administrative difficulties under this regulatory program due to different inspection techniques employed in the two Districts. Amendment of the administrative rules and regulations as hereinafter set forth will provide a uniform basis for inspection of all unshelled walnuts throughout the entire area of production. Such action will not result in any significant change in the composition of the packs of unshelled walnuts handled in either District.

The present minimum standard for unshelled walnuts (§ 984.402) specifies Third Quality and baby size as set forth in § 984.403 as the minimum quality and size pursuant to § 984.43(a). In order to conform with § 984.403 as hereinafter amended the reference should be changed to U.S. No. 3 grade and baby size as prescribed in the effective United States Standards for Walnuts (*Juglans regia*) in the Shell. This will not result in any significant change in the quality of unshelled walnuts packed in conformity with the minimum standard requirements.

It is therefore ordered: That, §§ 984.402 and 984.403 of Subpart—Administrative Rules and Regulations shall be recodified as paragraphs (a) and (b) respectively of a new § 984.433 *Grade and size regulations for unshelled walnuts*, and amended to read as follows:

§ 984.433 *Grade and size regulations for unshelled walnuts.*

(a) *Minimum standard.* The specifications for U.S. No. 3 grade and baby size as prescribed in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell shall be the minimum standard for all unshelled walnuts pursuant to § 984.43(a).

(b) *Pack specifications.* In accordance with § 984.43(b), each lot of unshelled walnuts certified as merchantable must meet one of the size classifications and one of the quality grades prescribed in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell except that: (1) Any lot of walnuts may be certified for shelling without regard to size classifications if not over 3 percent, by count, pass through a round opening  $\frac{5}{16}$  inch in diameter and (2) any lot not exceeding 25,000 pounds may be certified for shelling without regard to external appearance and condition if it is determined on the basis of a representative sample drawn by the inspector and bleached by the handler by the method ordinarily used by him that such lot would meet the external appearance and condition requirements. The requirements of this paragraph shall remain in effect continuously, except when it is found that estimated returns to producers are or will be in excess of parity.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule making procedure, or postpone the effective date of this order later than the date of publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) for the reasons that: (1) This action merely affects the methods used for inspecting unshelled walnuts and will not result in any significant change in the packs of unshelled walnuts handled; (2) inspection of the 1959 walnut crop is beginning and should be made on the basis herein prescribed throughout as great a portion of the current season as possible so as to apply at the time inspection of walnuts in substantial volume is being carried on; (3) inspections of large quantities of walnuts are already being made; (4) handlers have through the Walnut Control Board urged prompt

adoption of the action; and (5) the action will not impose any new or additional requirements on handlers which cannot be complied with by the effective time hereof.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 20, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,  
Director,

*Fruit and Vegetable Division.*

[F.R. Doc. 59-8951; Filed, Oct. 22, 1959; 8:47 a.m.]

## Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Administrator, Housing and Home Finance Agency

### PART 3—SLUM CLEARANCE AND URBAN RENEWAL

Subpart B—Relocation Payments Under Section 106(f) of the Housing Act of 1949, as Amended

The rules and regulations governing the making of relocation payments under section 106(f) of the Housing Act of 1949, as amended, 42 U.S.C. 1456, to individuals, families, and business concerns displaced from an urban renewal area, prescribed on behalf of the Housing and Home Finance Administrator by the Acting Urban Renewal Commissioner, as of October 8, 1956 (21 F.R. 9991, December 15, 1956), as amended (22 F.R. 1980, March 26, 1957; 22 F.R. 9937, December 12, 1957; 23 F.R. 750, February 5, 1958; 23 F.R. 1723, March 13, 1958; 23 F.R. 5723, July 30, 1958; 23 F.R. 6595, August 26, 1958; and 23 F.R. 10531, December 31, 1958), are hereby further amended to read as follows:

Sec.

- 3.100 Summary statement of applicable law.
- 3.101 Definitions.
- 3.102 Grant contract provisions for Relocation Payments.
- 3.103 Determination of conditions and notification to site occupants.
- 3.104 Administration of Relocation Payment program.
- 3.105 Fixed Relocation Payments to individuals and families.
- 3.106 Filing of individual claims.
- 3.107 Limitations on Relocation Payments.
- 3.108 Conditions determining eligibility for payment.
- 3.109 Ineligible disbursements.

AUTHORITY: §§ 3.100 to 3.109 issued under sec. 502, 62 Stat. 1283, as amended, sec. 106, 63 Stat. 417, as amended, sec. 305, 70 Stat. 1100, sec. 304, 71 Stat. 300, sec. 409, 73 Stat. 673; 12 U.S.C. 1701c, 42 U.S.C. 1456.

§ 3.100 Summary statement of applicable law.

Section 305 of the Housing Act of 1956 (70 Stat. 1100), approved August 7, 1956, amended Title I of the Housing Act of 1949, as amended, by adding a new section 106(f), which provides that Title I

projects may include the making of Relocation Payments to individuals, families, and business concerns displaced by an urban renewal project, subject to rules and regulations prescribed by the Housing and Home Finance Administrator. Section 106(f) was amended by section 304 of the Housing Act of 1957 (71 Stat. 300). Section 106(f) was further amended by section 409 of the Housing Act of 1959 (73 Stat. 673), to provide for the making of Relocation Payments to individuals, families, and business concerns displaced from an urban renewal area with respect to expenses incurred after September 23, 1959, by (a) the acquisition of real property by a Local Public Agency or by any other public body, (b) code enforcement activities undertaken in connection with an urban renewal project, or (c) a program of voluntary rehabilitation of buildings or other improvements in accordance with an urban renewal plan. Authority to issue such rules and regulations is included within the delegation to the Urban Renewal Commissioner and Regional Administrators effective December 23, 1954, published at 20 F.R. 423, as amended (20 F.R. 4275; 21 F.R. 1468, 3038, 5385, 5471; 22 F.R. 2887, 4105; 23 F.R. 1202, 1611, 4820, 8413, 9078, 9399; and 24 F.R. 242, 5815, and 8451).

#### § 3.101 Definitions.

For the purposes of the rules and regulations in this subpart, the following terms shall be construed, respectively, to mean:

(a) *Relocation Payment.* A payment made in accordance with section 106(f) of Title I and the rules and regulations in this subpart.

(b) *Grant contract.* A contract for loan and grant, or a contract for grant only, between the Federal Government and the Local Public Agency, for a Title I project.

(c) *Family.* A group of two or more persons living together and related by blood, marriage, or adoption; or two or more single persons not related by blood, marriage, or adoption who are living together in a single housekeeping unit.

(d) *Individual.* A person who is not a member of a family as defined in paragraph (c) of this section.

(e) *Transient individual.* An individual—other than one maintaining a separate housekeeping unit—who has lived in his quarters for less than 3 months prior to displacement.

(f) *Business concern.* A corporation, firm, partnership, individual, or other entity engaged in some type of business or profession necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business or profession. Nonprofit organizations and institutions such as churches and hospitals are included.

(g) *Property.* Tangible personal property, excluding trade fixtures, machinery, and other property which under State or local law is identified as real property, but including such items of real property as the lessee may remove by virtue of a previous written agreement with the lessor.

(h) *Moving expense.*<sup>1</sup> With respect to individuals and families, includes packing, insuring, and carting of property and incidental costs of disconnecting and reconnecting household appliances. With respect to business concerns, includes dismantling, crating, insuring, transporting, reassembling, reconnecting, and reinstalling of personal property, merchandise, etc., exclusive of the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting such reassembly, reconnection, or reinstallation.

(i) *Actual direct losses of property.* With respect to such property as equipment, fixtures, machinery, supplies, and materials (but not goods kept for sale), the difference between (1) the fair market value for continued use at the present location, and (2) the fair market value delivered to another location. Does not include losses sustained as a result of property damaged during a move.

(j) *Effective date.* (1) The effective date of original contracts executed on or after August 7, 1956, shall be the date of execution of the contract, or, if the Local Public Agency desires, the date of approval of the initial Project Expenditures Budget.

(2) In connection with grant contracts executed before August 7, 1956, which are amended to take advantage of Relocation Payments, "effective date" is a specific date established by the Local Public Agency and stipulated in the contract amendment, on or after which all relocation monetary assistance must be in accordance with these rules and regulations. The effective date may, at the option of the Local Public Agency, be any date on or after August 7, 1956, up to and including the date of contract amendment.

(k) *Urban renewal area.* An area which has been approved by the Administrator for an urban renewal project as defined in section 110(a) of Title I, the boundaries of which are set forth in the grant contract between the Federal Government and the Local Public Agency.

(l) *Urban renewal plan.* A plan for an urban renewal project as defined in section 110(b) of Title I.

(m) *Public body.* Includes a state, county, municipality, or other political subdivision, or an authority or agency which is a public legal entity.

(n) *Voluntary rehabilitation of buildings or other improvements.* Structural repairs or alterations undertaken by an owner of a property within an urban renewal area to conform to the project rehabilitation standards set forth in the urban renewal plan.

(o) *Code enforcement.* Structural repairs or alterations or a reduction in the number of occupants of a property within an urban renewal area to comply with a notice issued by a municipal code enforcement agency in connection with

the execution of an urban renewal project.

(p) *Title I.* Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 et seq.).

### § 3.102 Grant contract provisions for Relocation Payments.

(a) All new grant contracts executed on or after August 7, 1956, will contain provisions for Relocation Payments.

(b) Grant contracts executed prior to August 7, 1956, may be amended at the option of the Local Public Agency to provide for Relocation Payments. A Local Public Agency which wishes to amend its grant contract in such manner must notify the appropriate Regional Office of the Housing and Home Finance Agency of its desire in the matter prior to November 15, 1957.

(c) With regard to Title I projects covered by a grant contract containing provisions for Relocation Payments, the Local Public Agency has the option of making or not making Relocation Payments.

### § 3.103 Determination of conditions and notification to site occupants.

If a Local Public Agency determines that it will proceed under the provision of section 106(f) of Title I, the governing body of the Local Public Agency (or, if the Local Public Agency is the municipality, the board or commission responsible for carrying out Title I projects or, if there be no such board or commission, the principal executive officer of the municipality) shall officially approve the conditions under which the Local Public Agency will make Relocation Payments; these conditions shall be consistent with these rules and regulations and shall be available, in written form, to site occupants in the office where the Local Public Agency transacts its business affairs with site occupants. The Local Public Agency shall include in its Informational Statement to families, and in its corresponding notification to individuals and business concerns, that occupy property within an urban renewal area and who are being displaced a statement indicating (a) the availability of Relocation Payments, (b) where the written conditions under which Relocation Payments will be made are available, and (c) that such payments are available to site occupants who are displaced from an urban renewal area under the conditions set forth in § 3.108. If an Informational Statement or similar notification without such a statement has already been delivered, the Local Public Agency shall deliver to such individuals, families, and business concerns another communication containing the statement.

### § 3.104 Administration of Relocation Payment program.

(a) *Responsibility.* Local Public Agencies are initially responsible for determining the eligibility of all Relocation Payments. All transactions are to be supported by complete and proper documentation, which shall be maintained in the Local Public Agency's file.

(b) *Administrative expenses.* The amount paid out in the form of Relocation Payments made in accordance with

the rules and regulations in this subpart is reimbursable in full as a Title I capital grant, but the expenses of administering the relocation program are not eligible as Relocation Payments and must be shared by the Federal Government and the locality on the same basis as other eligible project expenditures.

(c) *Approval of claims.* All claims shall be approved either by the governing body of the Local Public Agency or by a Local Public Agency officer designated by resolution of such governing body. If the Local Public Agency is the municipality, this designation may be made by resolution of the board or commission responsible for carrying out Title I projects or, if there be no such board or commission, by a formal written statement of the principal executive officer of the municipality. The Local Public Agency may deny a claim of an otherwise eligible family, individual, or business concern that has defaulted in its obligations to the Local Public Agency. A third party contractor responsible for relocation activities may examine and recommend the approval of claims, and may disburse funds in payment of claims which have been approved by the Local Public Agency. No claim based upon acquisition of real property by a public body other than the Local Public Agency, code enforcement, or voluntary rehabilitation shall be approved hereunder unless the Local Public Agency shall have found and determined on the basis of reliable evidence that the claimant was, in fact, displaced from the urban renewal area by such activities. Such evidence shall contain the following data, where applicable: (1) The full name of the claimant and his street address in the urban renewal area before displacement, (2) the date or dates on which the claimant moved from the urban renewal area, and (3) a signed statement from any acquiring public body (which is not the Local Public Agency) indicating (i) when it acquired the property occupied by the claimant, (ii) whether such acquisition directly resulted in the claimant's displacement from the urban renewal area, and (iii) whether it had compensated the claimant or has agreed to compensate him for his reasonable and necessary moving expenses and direct losses of property suffered by virtue of his displacement, or (4) data as to the type, extent, and status of the structural repairs or alterations to the premises formerly occupied by the claimant, and the basis on which the Local Public Agency has determined that such repairs or alterations, or other actions with respect to the premises, have directly resulted in the claimant's displacement from the urban renewal area.

(d) *Cost of appraisals.* The cost of appraisals to determine actual direct losses of property, if made by or in behalf of the claimant, is not allowable as part of the claim. The cost of appraisals to determine the validity of such a claim, if made by the Local Public Agency, may be eligible as a regular administrative expense.

(e) *Accounts and records.* Accounts and records shall be maintained as prescribed by the Housing and Home Finance Agency.

<sup>1</sup> As amended at 23 F.R. 1723, applies to moving expenses incurred and/or direct losses of property suffered on or after March 13, 1958.

### § 3.105 Fixed Relocation Payments to individuals and families.

(a) *Schedule of fixed payments.* A Local Public Agency desiring to pay fixed amounts to eligible individuals and families (in lieu of the reasonable and necessary moving expenses of such individuals and families) shall submit to the HHFA Regional Office on Form H-6142, Fixed Relocation Payments Schedule, a schedule of fixed amounts which it proposes to pay. This schedule shall be accompanied by certified copies of the resolution of the governing body of the Local Public Agency approving the schedule, or, if the Local Public Agency is the municipality, the approving resolution of the board or commission responsible for carrying out Title I projects (or, if there be no such board or commission, the written approval of the principal executive officer of the municipality). One copy of the resolution or approval shall be submitted for each project to which the schedule applies. The schedule shall be formulated as follows:

(1) Fixed amounts to be paid to eligible individuals owning furniture and eligible families owning furniture shall be established for various sizes of accommodations. The proposed amounts shall not exceed the lowest normally available cost for the average (i.e., median) time required to move the personal effects of displaced families and individuals. Cost, in this connection, means carting expenses. The proposed schedule shall be in the form of a graduated scale of amounts to be paid, related to the number of rooms occupied by the claimant at the project, and shall cover accommodations varying in size from one-room apartments to the maximum number of rooms occupied by prospective displacees. Number of rooms occupied includes all occupied rooms except bathrooms, hallways, and closets. The proposed amount of fixed payment shall in no event exceed the maximum for reimbursement to individuals and families set forth in § 3.107(a).

(2) Fixed amounts proposed to be paid to eligible individuals not owning furniture shall be a nominal amount in no case exceeding \$5. Fixed amounts proposed to be paid to eligible families not owning furniture shall be a nominal amount in no case exceeding \$10.

(3) The proposed schedule shall not make allowance for loss of property.

(4) The proposed schedule shall be accompanied by an indication of whether the Local Public Agency intends to pay only the fixed amount to eligible individuals and families, or whether it intends to grant an option to eligible individuals and families either to claim the fixed amount or to claim reimbursement (but not in excess of the maximum reimbursement to individuals and families set forth in § 3.107(a)) for the sum of the actual moving expense and any direct loss of property.

(b) *Administration of fixed payments.* With regard to moving expenses incurred on or after the date that the schedule of fixed payments is approved

by the HHFA Regional Administrator or his designee, the amounts included in the approved schedule may be paid to eligible individuals who have moved and families which have moved in full settlement of their moving expense and any direct loss of property without requiring documentation other than the submission of a properly completed claim as outlined in § 3.106(a). If the Local Public Agency proposed and the HHFA Regional Administrator or his designee approved the schedule on the basis of granting eligible individuals and families an option of claiming the fixed amount or reimbursement for actual moving expense and any direct loss of property, the sum of the actual moving expense and any direct loss of property (but not in excess of the maximum reimbursement to individuals and families set forth in § 3.107(a)) may be reimbursed to eligible individuals and families instead of the fixed amount, provided they submit a claim supported by the documentation described in § 3.106(b). If the joint occupants of a single dwelling unit at the project site move to two or more locations and consequently submit more than one claim, an eligible claimant for a fixed payment may be paid only his reasonably prorated share (as determined by the Local Public Agency) of the total fixed payment applicable to such dwelling unit, and the total or fixed payments made to all such claimants moving from such dwelling unit shall not exceed the total fixed payment applicable to such dwelling unit.

### § 3.106 Filing of individual claims.

(a) In order to obtain a fixed Relocation Payment, an individual or family will be required to submit a written claim on Form H-6140, Claim for Relocation Payment, dated 11-58 or after. No additional documentation will be required.

(b) In order to obtain a Relocation Payment for actual moving expense and any direct loss of property, a family, individual, or business concern may move at its own expense and seek reimbursement upon presentation of a receipted bill. By prearrangement between the Local Public Agency, the occupant, and the mover, which arrangements are confirmed in writing by the Local Public Agency, the claimant may present an unpaid moving bill to the Local Public Agency, and the Local Public Agency may pay the mover directly. The following will be required to be submitted in support of the claim:

(1) Form H-6140.

(2) A receipted bill or other written evidence of moving expense to establish the validity of the portion of the claim for moving expense.

(3) Written evidence, which may include appraisals, certified prices, or estimates obtained by the claimant, to support the portion of the claim for actual direct losses of property.

(c) All claim papers and related evidence are to become permanent records in the Local Public Agency's files and will be subject to audit by the Federal Government.

### § 3.107 Limitations on Relocation Payments.

(a) *Aggregate amounts.*<sup>2</sup> The total aggregate amount of moving expenses and actual direct losses of property for which reimbursement or compensation is not otherwise made is limited to \$200 in the case of an individual or family and \$3,000 in the case of a business concern, irrespective of the number of moves or the distance of the moves.

(b) *Charges for temporary on-site moves.*<sup>3</sup> Temporary on-site moves which clearly are made for the convenience of the Local Public Agency by occupants of property acquired by the Local Public Agency in order to effect monetary savings in project costs shall be considered as project expenditures and will not be chargeable to a site occupant's allowable Relocation Payment. Any other temporary on-site move is chargeable against the occupant's maximum allowable Relocation Payment.

### § 3.108 Conditions determining eligibility for payment.<sup>4</sup>

(a) Families, business concerns, and individuals (other than transient individuals) who are displaced from an urban renewal area and who move on or after the effective date may be eligible for Relocation Payments.

(b) The property from which the individual, family, or business concern is displaced must be part of the urban renewal area.

(c) The property from which the individual, family, or business concern is displaced must have been acquired by the Local Public Agency or by any other public body; or the displacement must have been caused by code enforcement activities undertaken in connection with an urban renewal project or the voluntary rehabilitation of buildings or other improvements undertaken in accordance with an urban renewal plan which required the property to be vacated. For the purposes of the rules and regulations in this part, acquisition is deemed to occur:

(1) At the time the Local Public Agency or other public body obtains possession of the property pursuant to a court order in a condemnation action in-

<sup>2</sup> As amended at 22 F.R. 9937 and 23 F.R. 750, increases the \$2,000 limitation to \$2,500 and applies to moving expenses incurred and/or direct losses of property suffered on or after July 12, 1957. As amended herein, increases the \$100 limitation to \$200 and the \$2,500 limitation to \$3,000, and applies to moving expenses incurred and/or direct losses of property suffered on or after September 23, 1959.

<sup>3</sup> As amended at 23 F.R. 1724, applies to moving expenses incurred and/or direct losses of property suffered on or after March 13, 1958.

<sup>4</sup> As amended herein, applies to moving expenses incurred and/or direct losses of property suffered on or after September 23, 1959, and authorizes Relocation Payments when displacement from an urban renewal area is made necessary by (1) the acquisition of real property by a public body other than the Local Public Agency, (2) code enforcement, or (3) voluntary rehabilitation, as well as when acquisition is by a Local Public Agency.

stituted for the purpose of acquiring title; or

(2) At the time of conveyance of title; or

(3) At the time a binding contract of sale (or purchase) is entered into between the Local Public Agency or other public body and the owner: *Provided*, That such contract includes a provision prohibiting the owner from re-renting the property once it is vacated by the individual, family, or business concern then occupying it, or the Local Public Agency or other public body otherwise receives adequate written assurance from the owner to such effect: *And provided further*, That no Relocation Payments may be made until the property is actually conveyed to the Local Public Agency or other public body.

(d) The claim for Relocation Payment must have been submitted to the Local Public Agency within a reasonable period of time after the related moving expense is incurred or direct loss of property is suffered.

#### § 3.139 Ineligible-disbursements.

Disbursements that are not eligible as Relocation Payments include, but are not limited to, the following:

(a) Disbursements made prior to the effective date.

(b) Disbursements made after the effective date for moving expenses or losses incurred prior to the effective date.

(c) Disbursements to individuals, families, or business concerns who moved prior to acquisition (where the property is acquired) by the Local Public Agency or other public body of the property which they occupied.

(d) Disbursements to transient individuals.

(e) Disbursements for any rent, for loss of goodwill or profit, or for any costs other than necessary moving expenses or actual direct losses of property.

(f) Disbursements for expenses or losses for which reimbursement or compensation is otherwise made.

(g) Disbursements for expenses of a claimant in preparing and supporting his claim.

(h) Disbursements to any individual, family, or business concern moving from any real property which was previously vacated in whole or in part by some other person or business establishment because of (1) its acquisition by a public body other than the Local Public Agency, (2) code enforcement, or (3) voluntary rehabilitation.

(i) Disbursements made after completion of the project or if completion is deferred solely for the purpose of obtaining further Relocation Payments.

Issued as of the 23d day of October 1959.

[SEAL]

C. L. OSWALD,  
Acting Urban Renewal Commissioner.

[F.R. Doc. 59-8968; Filed, Oct. 22, 1959; 8:49 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter I—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1998]

[661403]

#### COLORADO

#### Partly Revoking Certain Stock Driveway Withdrawals

##### Correction

In F.R. Doc. 59-8269, appearing at page 7957 in the issue of Friday, October 2, 1959, the following corrections are made in the land description:

*Sixth Principal Meridian.* (1) Under \*T. 15 S., R. 85 W., the line reading "Sec. 21, N $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;" should read "Sec. 21, W $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;"

(2) Under T. 15 S., R. 86 W., the line reading "Sec. 25, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{2}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;" should read "Sec. 25, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;"

(3) Under T. 7 S., R. 93 W., the line reading "Sec. 25, W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{4}$ SW $\frac{1}{4}$ ;" should read "Sec. 25, W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;"

(4) Under T. 6 S., R. 103 W., the line reading "Sec. 6, lots 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;" should read "Sec. 6, lots 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;"

(5) Under T. 9 S., R. 103 W., the line reading "Sec. 30, S $\frac{1}{2}$ ;" should read "Sec. 30, S $\frac{1}{2}$ ;"

*New Mexico Principal Meridian.* Under \*T. 51 N., R. 2 E., the line reading "Sec. 33, lots 1, 2, 3, 4, 5, 6, 7, 9, 10, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ ;" should read "Sec. 33, lots 1, 2, 3, 4, 5, 6, 7, 9, 10, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ ;"

## Title 46—SHIPPING

### Chapter I—Coast Guard, Department of the Treasury

#### SUBCHAPTER 5—NUMBERING OF UNDOCUMENTED VESSELS, STATISTICS ON NUMBERING, AND "BOATING ACCIDENT REPORTS" AND ACCIDENT STATISTICS

[CGFR 59-43]

#### PART 172—NUMBERING REQUIREMENTS UNDER ACT OF JUNE 7, 1918

##### Subpart 172.25—Termination Requirements

##### MICHIGAN SYSTEM OF NUMBERING APPROVED

Acting under the authority delegated by Treasury Department Order 167-32, dated September 23, 1958 (23 F.R. 7605), the Commandant, United States Coast Guard, on September 30, 1959, approved the Michigan system for the numbering

of motorboats, which was established pursuant to the Federal Boating Act of 1958.

As provided in this approval, the Michigan system shall be operative on and after Tuesday, March 1, 1960. On that date the authority to number motorboats principally used in the State of Michigan will pass to that State and simultaneously the Coast Guard will discontinue numbering such motorboats. Those motorboats presently numbered should continue to display the Coast Guard number until renumbered by Michigan. On and after March 1, 1960, all reports of "boating accidents" which involve motorboats numbered in Michigan will be required to be reported to the nearest peace officer, State police post, or to the sheriff of the county in which the accident occurred who shall submit a complete report thereof to the Commissioner of State Police, pursuant to the pertinent provisions of Act No. 245 of the Public Acts of Michigan of 1959.

Because § 172.25-15(a) (9), as set forth in this document, is an informative rule about official actions performed by the Commandant, it is hereby found that compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof) is unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), and 167-17, dated June 29, 1955 (20 F.R. 4976), to promulgate rules in accordance with the statutes cited with the informative rule below, the following § 172.25-15 (a) (9) is prescribed and shall be in effect on and after the date set forth therein:

#### § 172.25-15 Effective dates for approved State systems of numbering.

(a) \* \* \*

(9) Michigan—March 1, 1960.

(Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545; 5 U.S.C. 1002, 14 U.S.C. 633)

Dated: October 12, 1959.

[SEAL]

A. C. RICHMOND,  
Vice Admiral, U.S. Coast Guard,  
Commandant.

[F.R. Doc. 59-8969; Filed, Oct. 22, 1959; 8:49 a.m.]

## Title 50—WILDLIFE

### Chapter I—Fish and Wildlife Service, Department of the Interior

#### PART 34—SOUTHEASTERN REGION

##### Subpart—Loxahatchee National Wildlife Refuge, Florida

##### USE OF BOATS

*Basis and purpose.* Pursuant to the authority conferred upon the Secretary of the Interior by section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 7151), as amended and supplemented,

and acting in accordance with the authority delegated to me by Commissioner's Order No. 4 (22 F.R. 8126), I have determined that a change in the regulation governing the use of boats on areas of the Loxahatchee National Wildlife Refuge, Florida, would be consistent with the management of the refuge.

By notice of proposed rule making published in the FEDERAL REGISTER of September 10, 1959 (24 F.R. 7277), the public was invited to participate in the amendment of the existing regulation which would change the regulation governing the use of boats on the Loxahatchee National Wildlife Refuge (conforming substantially with the rule set forth below) by submitting written data, views, or arguments to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within a period of 30 days from the date of publication. No comments, suggestions, or objections having been received within the 30-day period, the regulations constituting Part 34 are amended by revising paragraph (b) of § 34.93 to Subpart—Loxahatchee National Wildlife Refuge, Florida, as follows:

#### § 34.93 Use of boats permitted.

(b) *Limitation.* Inboard and outboard motor boats may not be used during the open season for the hunting of migratory birds or fishing in areas designated by suitable posting by the Refuge Officer in charge as closed to motor boat operation during such open season.

(Sec. 10, 45 Stat. 1224; 16 U.S.C. 7151)

In accordance with the requirements imposed by section 4(c) of the Administrative Procedure Act of June 11, 1946, 60 Stat. 238; 5 U.S.C. 1003(c), the foregoing amendment shall become effective on the 31st day following publication in the FEDERAL REGISTER.

Dated: October 19, 1959.

D. H. JANZEN,  
Director, Bureau of  
Sport Fisheries and Wildlife.

[F.R. Doc. 59-8945; Filed, Oct. 22, 1959;  
8:46 a.m.]

## PART 35—NORTHEASTERN REGION

### Subpart—Moosehorn National Wildlife Refuge, Maine

#### HUNTING

*Basis and purpose.* Pursuant to the authority conferred upon the Secretary of the Interior by section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 7151), as amended and supplemented, and acting in accordance with the authority delegated to me by Commissioner's Order No. 4 (22 F.R. 8126), I have determined that the amendments to the regulation permitting deer hunting on the Moosehorn National Wildlife Refuge, Maine, would be consistent with the management of the refuge.

By notice of proposed rule making published in the FEDERAL REGISTER of September 12, 1959 (24 F.R. 7379), the public was invited to participate in the adop-

tion of a proposed regulation (conforming substantially with the rule set forth below) which would permit the more favorable control of deer hunting on the Moosehorn National Wildlife Refuge by submitting written data, views, or arguments to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within a period of 30 days from the date of publication.

One petition with 236 names has been received from Mr. Robert C. Godfrey, Secretary, Dennys River Sportsman's Club, Dennyville, Maine, objecting to the proposed amendments to the hunting regulations for the Moosehorn National Wildlife Refuge. This petition makes the following assertions:

1. That by allowing the game to increase in numbers on the Refuge, it will eventually spread to the territory adjacent to the Refuge and greatly improve the hunting condition in general.
2. The attractiveness of the Refuge to visitors is much greater if they are privileged to see the various types of wildlife in number.
3. The elimination of hunters being privileged to pursue and kill partially tame animals.

Scientific findings relative to deer populations and range conditions by biologists of the Bureau of Sport Fisheries and Wildlife and the State of Maine Department of Inland Fisheries and Game have been cited and explained to the Dennys River Sportsman's Club in public meetings on several occasions.

Investigations by our wildlife biologists and by biologists of the State of Maine show continued improvement in herd reproduction, age distribution, and physical vigor since the first opening for deer hunting in 1954. Range conditions, including the availability of deer browse, have also gradually improved in the past five years. Our findings show a need for continued deer hunting on the Moosehorn National Wildlife Refuge in order to maintain a proper balance between deer herd numbers and the amount of food available to the herd. Biologists of the State of Maine concur in these findings.

The statements in the petition are not in accordance with the biological data. It has therefore been determined that deer hunting on the Moosehorn National Wildlife Refuge is in accord with the basic wildlife management objectives of this area and as such is in the public interest.

No other objections having been received within the 30-day period, the regulations constituting Part 35 are amended by adding §§ 35.38 and 35.39 to Subpart—Moosehorn National Wildlife Refuge, Maine, as follows:

#### § 35.38 Hunting of deer permitted.

Subject to compliance with the provisions of Parts 18 and 21 of this chapter, deer hunting is permitted on the hereinafter described lands of the Moosehorn National Wildlife Refuge subject to the following conditions, restrictions, and requirements:

(a) *Hunting areas.* Deer may be taken on all areas of the Moosehorn National Wildlife Refuge except:

(1) *Baring Unit.* Within the posted closed area surrounding refuge headquarters.

(2) *Edmunds Unit.* Within the posted closed area surrounding refuge subheadquarters or all lands of the Edmunds Unit east of U.S. Highway No. 1 and south of the refuge boundary line running from approximately opposite the North Trail junction with U.S. Highway 1 to the shores of Cobscook Bay.

(b) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for the purpose of regulating the hunting. All deer taken shall be presented for registration and examination at such times and place or places as may be determined by the officer in charge.

(c) *State laws.* Strict compliance with all applicable State laws and regulations is required.

(d) *Hunting permits.* No person is permitted to hunt on any refuge area open to public hunting until he has obtained a permit from the officer in charge. Hunting by minors is permitted if accompanied by a responsible adult.

#### § 35.39 Firearms and lights.

(a) *Firearms.* The possession of firearms of any description is prohibited except as follows:

(1) By authorized State and Federal officials engaged in law enforcement or other official duties.

(2) By persons traveling public highways under easement to the State of Maine wherein title is vested in the United States who may carry or transport only unloaded firearms that are dismantled and/or cased.

(3) By deer hunting permittees using only rifles firing center fire cartridges or shotguns with loads of either rifled slugs, single ball, or buckshot not smaller than single 0.

(b) *Artificial lights.* No person shall use the rays of a spotlight or other artificial light, or automotive headlight on any highway, field, or woodland within the refuge boundaries or along public highways under easement to the State of Maine wherein title is vested in the United States, for the purpose of spotting, locating, or taking any wild animals or birds.

(Sec. 10, 45 Stat. 1224; 16 U.S.C. 7151)

Although it is the policy of the Department of the Interior that wherever practicable the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003) be observed voluntarily, the imminence of the deer hunting season in the State of Maine makes more than the publication of the advance notice impracticable. In order to meet this emergency, this regulation shall become effective immediately upon publication in the FEDERAL REGISTER.

Issued at Washington, D.C., and dated October 19, 1959.

D. H. JANZEN,  
Director, Bureau of  
Sport Fisheries and Wildlife.

[F.R. Doc. 59-8944; Filed, Oct. 22, 1959;  
8:46 a.m.]

# PROPOSED RULE MAKING

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[ 26 CFR (1954) Part 301 ]

### PROCEDURE AND ADMINISTRATION

#### Bonds

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DANA LATHAM,

Commissioner of Internal Revenue.

The following regulations are hereby prescribed under chapter 73 of the Internal Revenue Code of 1954, relating to bonds, and are effective on and after August 17, 1954. The regulations under chapter 73 are applicable with respect to taxes imposed by the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954.

#### BONDS

Sec.	
301.7101	Statutory provisions; form of bonds.
301.7101-1	Form of bond and surety required.
301.7102	Statutory provisions; single bond in lieu of multiple bonds.
301.7102-1	Single bond in lieu of multiple bonds.
301.7103	Statutory provisions; cross references—other provisions for bonds.

#### BONDS

#### § 301.7101 Statutory provisions; form of bonds.

SEC. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803(a)(1)), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regula-

tions issued by the Secretary or his delegate.

(2) *United States bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U.S.C. 15.

#### § 301.7101-1 Form of bond and surety required.

(a) *In general.* Any person required to furnish a bond under the provisions of the Internal Revenue Code of 1954 (other than section 6803(a)(1), relating to bonds required of certain postmasters, and section 7485, relating to bond to stay assessment and collection of a deficiency pending review of a Tax Court decision), or under any rules or regulations prescribed under such Code, shall execute such bond;

(1) On the appropriate form prescribed by the Internal Revenue Service (which may be obtained from the district director), and

(2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety*—(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in 6 U.S.C. 15 (see 31 CFR Part 225).

(2) *Other surety acceptable in discretion of bond approving officer.* Unless otherwise expressly provided in the Internal Revenue Code of 1954, or the regulations thereunder, a bond may, in the discretion of the internal revenue officer or employee authorized to approve such bond, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in subparagraph (1) of this paragraph, it is:

(i) Executed by a corporate surety (other than a surety company) or by two or more individual sureties, provided such individual sureties meet the conditions contained in subparagraph (3) of this paragraph;

(ii) Secured by a mortgage on real or personal property;

(iii) Secured by acceptable collateral deposited with a responsible financial institution acting as escrow agent;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order; or

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) He must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(ii) He must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which he offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) He must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the district director; and

(v) He must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of his security, executed on the appropriate form furnished by the district director.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(c) *Bonds required by Internal Revenue Code of 1939.* This section shall also apply in the case of bonds required under the Internal Revenue Code of 1939 (other than sections 1423(b) and 1145) or under the regulations under such Code.

#### § 301.7102 Statutory provisions; single bond in lieu of multiple bonds.

SEC. 7102. *Single bond in lieu of multiple bonds.* In any case in which two or more bonds are required or authorized, the Secretary or his delegate may provide for the acceptance of a single bond complying with the requirements for which the several bonds are required or authorized.

#### § 301.7102-1 Single bond in lieu of multiple bonds.

A person who is required, or authorized, under the Internal Revenue Code of 1954 (other than sections 6803(a)(1) and 7485), or under any rules or regulations under such Code, to execute two or more bonds may, in the discretion of the internal revenue officer or employee authorized to approve such bonds, furnish a single bond in lieu of such two or more bonds but only if such single bond meets all the conditions and requirements prescribed for each of the separate bonds which it replaces. This section shall also apply in the case of bonds required or authorized under the Internal Revenue Code of 1939 (other

than sections 1423(b) and 1145) or under the regulations under such Code.

**§ 301.7103 Statutory provisions; cross references—other provisions for bonds.**

**SEC. 7103. Cross references—other provisions for bonds—(a) Extensions of time.** (1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For furnishing of bond where taxable year is closed by the Secretary or his delegate, see section 6851(e).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) *Release of lien or seized property.* (1) For the release of the lien provided for in section 6325 by furnishing the Secretary or his delegate a bond, see section 6325(a) (2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324(3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at \$1,000 or less, see section 7325(3).

(c) *Miscellaneous.* (1) For bond as a condition precedent to the allowance of the credit for accrued foreign taxes, see section 905(c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

(d) *Bonds required with respect to certain products.* (1) For bond in case of articles taxable under subchapter B of chapter 37 processed for exportation without payment of the tax provided therein, see section 4513(c).

(2) For bond in case of oleomargarine removed from the place of manufacture for exportation to a foreign country, see section 4593(b).

(3) For requirement of bonds with respect to certain industries see—

(A) Section 4596 relating to a manufacturer of oleomargarine;

(B) Section 4814(c) relating to a manufacturer of process or renovated butter or adulterated butter;

(C) Section 4833(c) relating to a manufacturer of filled cheese;

(D) Section 4713(b) relating to a manufacturer of opium suitable for smoking purposes;

(E) Section 4804(c) relating to a manufacturer of white phosphorus matches;

(F) Section 4101 relating to a producer or importer of gasoline or a manufacturer or producer of lubricating oils subject to tax under chapter 32.

(e) *Personnel bonds.* (1) For bonds of internal revenue personnel to insure faithful performance of duties, see section 7803(c).

(2) For jurisdiction of United States district courts, concurrently with the courts of the several States, in an action on the official bond of any internal revenue officer or employee, see section 7402(d).

(3) For bonds of postmasters to whom stamps have been furnished under section 6802(1), see section 6803(a) (1).

(4) For bonds in cases coming within the provisions of section 6802 (2) or (3), relating to stamps furnished a designated depository of the United States or State agent, see section 6803(b) (1).

[F.R. Doc. 59-8970; Filed, Oct. 22, 1959; 8:50 a.m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 17 CFR Part 955 I

### HANDLING OF GRAPEFRUIT GROWN IN ARIZONA; IMPERIAL COUNTY, CALIF., AND THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

#### Approval of Expenses and Fixing of Rate of Assessment for 1959-60 Fiscal Period and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Administrative Committee, established under Marketing Agreement No. 96, as amended, and this part, as amended (7 CFR Part 955), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California; situated south and east of White Water, California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and provisions thereof:

(1) That the Secretary of Agriculture find that expenses not to exceed \$30,825 will be necessarily incurred during the fiscal period August 1, 1959, to July 31, 1960, for the maintenance and functioning of the committee established under the aforesaid amended marketing agreement and order.

(2) That the Secretary of Agriculture fix, as the share of such expenses which each handler who first handles grapefruit shall pay during the aforesaid fiscal period in accordance with the aforesaid amended marketing agreement and order, the rate of assessment at three-fourths cent (\$0.0075) per carton of grapefruit handled by such handler as the first handler thereof during such fiscal period.

(3) That the Secretary of Agriculture find that unexpended assessment funds, in excess of expenses incurred during the fiscal period ending July 31, 1960, shall be carried over as a reserve in accordance with the applicable provisions of \$955.42 of said amended marketing agreement and order.

(4) That the Secretary of Agriculture find that unexpended assessment funds in the amount of \$12,481.88, which are in excess of expenses incurred during the fiscal period ended July 31, 1959, shall be carried over as a reserve in accordance with the applicable provisions of \$955.42 of said amended marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2077, South Building, Washington 25, D.C., not later than the 10th day after the

publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 19, 1959.

S. R. SMITH,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[F.R. Doc. 59-8950; Filed, Oct. 22, 1959; 8:47 a.m.]

## FEDERAL AVIATION AGENCY

### 14 CFR Part 507 I

[Reg. Docket 157]

### AIRWORTHINESS DIRECTIVES

#### Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring corrective action involving Wright TC18DA and TC18EA Series engines. This proposal if adopted will supersede item (8) of AD 58-13-5 published in 23 F.R. 5561.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination by interested persons in the Docket Section when the prescribed time for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) by adding the following airworthiness directive:

WRIGHT ENGINES. Applies to all Wright TC18DA and TC18EA Series engines.

Compliance required at first engine overhaul after December 1, 1959, but not later than September 1, 1960.

To prevent inadvertent loss of oil from the power recovery turbine fluid couplings, the PRT oil control valve must incorporate

a WAD P/N 147825 valve body, or subsequently released part. This valve body incorporates three flats to provide a permanent oil bypass to insure an adequate supply of turbine coupling oil in the event of a regulator spring failure.

(WAD Service Bulletins Nos. TC18-390 and TC18E-210 cover this same subject and furnish instructions for the rework of the superseded valve bodies to the P/N 147825 configuration.)

This AD supersedes and cancels item No. (8) of AD 58-13-5.

Issued in Washington, D.C., on October 19, 1959.

WILLIAM B. DAVIS,  
Director,  
Bureau of Flight Standards.

[F.R. Doc. 59-8932; Filed, Oct. 22, 1959;  
8:45 a.m.]

## [ 14 CFR Part 507 ]

[Reg. Docket 159]

### AIRWORTHINESS DIRECTIVES

#### Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196), notice is hereby given that

the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring removal of certain Hartzell propellers. This proposal if adopted will supersede AD 53-6-2 published in 21 F.R. 9522.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination by interested persons in the Docket Section when the prescribed time for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603

of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) by adding the following airworthiness directive:

**HARTZELL PROPELLERS.** Applies to all Hartzell HC-12X20 propellers with serial numbers as indicated below. These propellers may be installed on such aircraft models as Republic RC-3, Grumman G-44, and Navion series.

Compliance required not later than January 1, 1960.

To preclude possible failures, remove from service Hartzell hub spiders with serial numbers 1 through 4303, 4307 through 4316, 4318, 4319, 4321, 4323, 4324, 4325, 4328, 4329, 4332 through 4336, 4341. After removal, these hub spiders will not be eligible for use in certificated aircraft.

Hub spiders with serial numbers other than those listed above may be used as replacements.

This supersedes AD 53-6-2.

Issued in Washington, D.C., on October 19, 1959.

WILLIAM B. DAVIS,  
Director, Bureau of  
Flight Standards.

[F.R. Doc. 59-8933; Filed, Oct. 22, 1959;  
8:45 a.m.]

## NOTICES

### DEPARTMENT OF THE TREASURY

#### Office of the Secretary

[AA 643.3]

#### BRASS CLOSET FLANGES FROM JAPAN

#### Determination of No Sales at Less Than Fair Value

OCTOBER 16, 1959.

A complaint was received that brass closet flanges from Japan were being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that brass closet flanges from Japan are not being, nor are likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

*Statement of reasons.* Brass closet flanges are not sold for home consumption in Japan, nor are they sold to countries other than the United States. For fair value purposes, therefore, the price at which the flanges are sold to the United States was compared to the constructed value of such flanges. It was found that the purchase price is not less than the constructed value.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,  
Acting Secretary of the Treasury.

[F.R. Doc. 59-8971; Filed, Oct. 22, 1959;  
8:50 a.m.]

### DEPARTMENT OF THE INTERIOR

#### Bureau of Reclamation

#### ARIZONA

#### Notice of Proposed Sale of Residential and Commercial Lots

Pursuant to the authority of the Act of September 2, 1958 (72 Stat. 1686), notice is hereby given that the Bureau of Reclamation will offer for sale at their appraised value approximately 40 residential lots and 130 commercial lots in the Town of Page, Arizona, the new construction town adjacent to the Glen Canyon Dam on the Colorado River in northern Arizona.

The residential lots range in size from 7,000 to 11,000 square feet. Commercial building sites are available in many different sizes and locations. Lots are fully improved with street, sidewalks, curb and gutter, and water and sewer systems. Power and telephone service are available. Residential lots are priced from \$1,750 to \$2,350. There is a wide range of prices for commercial lots depending on size and location. The Government will charge for certain municipal-type services it provides.

Temporary schools through high school are in operation in Page, and permanent school facilities, now under construction, are nearing completion. Several new churches are under construction and others are planned. A completely equipped 25-bed hospital serves the town and medical and dental services are available. A variety of businesses have been established in permanent and temporary quarters, and others

will be built in the near future. A commercial airline provides daily service to Page from Phoenix, Arizona, and Salt Lake City, Utah. Airplane charter service is also available at the Page Airport.

Construction of Glen Canyon Dam is now underway and is scheduled for completion in 1964. The world's third largest reservoir, to be created by the dam, will be developed for public recreational use in cooperation with the National Park Service.

Commencing at 10:00 a.m., November 12, 1959, applications for purchase of residential and commercial lots will be received at the office of the Project Construction Engineer, Page, Arizona. The Bureau will grant options to purchase the lots upon payment of \$25.00. The options will be nonassignable and of 120 days' duration, within which period the optionee must arrange construction financing, secure a building permit from the Page City Administrator, and pay the balance of the purchase price. The \$25.00 payment will be forfeited to the Government if the terms of the option agreement are not fulfilled. When more than one application is received for the same lot during the period from November 12, 1959, to November 27, 1959, the successful applicant will be determined by drawing. Lots under option for which the purchases are not concluded within the option period and lots for which no option request is received at the office of the Project Construction Engineer, Page, Arizona, by 4:00 p.m., on said November 27, 1959, will be available for purchase under the same type option agreement on a first-come, first-served basis until all lots are sold. Deeds to all lots will be subject to reservation of

all mineral rights and to applicable protective covenants, administrative, land use, and zoning restrictions of Page, Arizona.

Full details with respect to location of lots, prices, dimensions, etc., will be furnished upon request to the Project Construction Engineer, Bureau of Reclamation, Page, Arizona.

WILLIAM I. PALMER,  
Acting Commissioner of Reclamation.

[F.R. Doc. 59-9022; Filed, Oct. 22, 1959;  
9:14 a.m.]

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation SALES OF CERTAIN COMMODITIES

#### October 1959 Monthly Sales List; Amendment

The price listing for the Commodity Credit Corporation Monthly Sales List for October 1959, 24 F.R. 8277, is amended as follows:

Effective October 9: Nonfat dry milk is being removed from the list of Commodity Credit Corporation commodities available for barter because supplies at this date are limited.

Effective October 13: Nonfat dry milk for export sale and for domestic sale for restricted use is being removed from the list of Commodity Credit Corporation commodities available for sale at this date.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1053; 7 U.S.C. 1427, sec. 208, 63 Stat. 901)

Issued: October 20, 1959.

CLARENCE D. PALMBY,  
Acting Executive Vice President,  
Commodity Credit Corporation.

[F.R. Doc. 59-8972; Filed, Oct. 22, 1959;  
8:50 a.m.]

## DEPARTMENT OF COMMERCE

### Federal Maritime Board

#### STOCKARD STEAMSHIP CORP. ET. AL.

##### Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

(1) Agreement No. 7812-3, between Stockard Steamship Corporation and Atlantic Ocean Transport Corporation (carriers presently comprising the Levant Line joint service, Agreement No. 7812, as amended), and Mediterranean Transport Corporation, modifies approved joint service Agreement No. 7812, as amended, to provide for the admission of Mediterranean Transport Corporation as a party to said joint service.

(2) Agreement No. 8242-2, between Mississippi Shipping Company, Inc., and Waterman Steamship Corporation of

Puerto Rico, modifies approved Agreement No. 8242, as amended, covering a through billing arrangement in the trade from ports in West Africa to Puerto Rico, with transshipment at New Orleans or Mobile. The purpose of the modification is to provide for a division of the transshipment expenses at New Orleans or Mobile on the basis of 60 percent to Mississippi and 40 percent to Waterman, instead of on the basis of 50 percent to each party, as presently provided in the agreement.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to either of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 20, 1959.

By order of the Federal Maritime Board.

JAMES L. PRIMPER,  
Secretary.

[F.R. Doc. 59-8964; Filed, Oct. 22, 1959;  
8:49 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of the Secretary

#### CERTAIN DESIGNATED OFFICIALS

##### Delegation of Authority To Certify Copies of Documents

Delegation of authority to certify copies of documents (23 F.R. 7089) is hereby amended to read as follows:

Pursuant to the provisions of section 623d, Chapter 11A, Title 5, United States Code, and Reorganization Plan No. 1 of 1953, the following persons in the Department of Health, Education, and Welfare are authorized to certify copies of documents on file in the Department of Health, Education, and Welfare, and to cause the seal of the Department to be affixed:

1. With respect to all documents on file in the Department:

- a. Associate General Counsel;
- b. Chief, Administrative Services Branch, Office of the General Counsel; and
- c. Secretary to the Associate General Counsel.

2. With respect to documents on file in the Food and Drug Administration:

- a. Commissioner of Food and Drugs;
- b. Deputy Commissioner of Food and Drugs; and
- c. Director, Bureau of Enforcement, Food and Drug Administration.

Dated: October 16, 1959.

[SEAL] ARTHUR S. FLEMING,  
Secretary.

[F.R. Doc. 8942; Filed, Oct. 22, 1959;  
8:45 a.m.]

## STATEMENT OF ORGANIZATION AND DELEGATIONS OF AUTHORITY

### Miscellaneous Amendments

The Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare (22 F.R. 1045) is hereby amended to:

1. Delete section 2-300.50 of Part 2 and subsection (4) of section 10.20 of Part 10.
2. Amend section 2-500.40 of Part 2 to read as follows:

Except as specifically delegated or assigned to other officials of the Department (not under the supervision of the Director of Administration) or as reserved elsewhere in this Statement, the Director of Administration is hereby authorized to perform all functions of the Secretary in the field of administrative and financial management and is also hereby authorized to exercise the authority of the Secretary under section 623d, Chapter 11A, Title 5, United States Code, relating to the use of the Department Seal.

Dated: October 16, 1959.

[SEAL] ARTHUR S. FLEMING,  
Secretary.

[F.R. Doc. 59-8943; Filed, Oct. 22, 1959;  
8:46 a.m.]

## INTERDEPARTMENTAL COMMITTEE ON TRADE AGREEMENTS

### WOOLEN AND WORSTED FABRICS

#### Renegotiation of United States Concessions Under General Agreement on Tariffs and Trade

Pursuant to section 4 of the Trade Agreements Act, approved June 12, 1934, as amended (48 Stat. 945, ch. 474; 65 Stat. 73, ch. 141), and to paragraph 4 of Executive Order 10082 of October 5, 1949, as amended (3 CFR, 1949-1953 Comp., pp. 281, 355), notice is hereby given by the Interdepartmental Committee on Trade Agreements of intention to renegotiate the United States tariff concessions in items 1108 (and the note thereto) and 1109(a) in Part I of Schedule XX to the General Agreement on Tariffs and Trade (61 Stat. (pt. 5) A1274) and in item 1109(a) in Part I of Schedule XX to the Torquay Protocol to the General Agreement on Tariffs and Trade (3 UST (pt. 1) 1186).

Such renegotiations may result, under certain circumstances, in rates of duty higher than the rates currently applicable under the tariff quota proclaimed by the President pursuant to the note to item 1108 in Part I of Schedule XX to the General Agreement, and, under other circumstances, in rates of duty lower than the rates now applicable under the tariff quota (Proclamation No. 3160 of September 23, 1956; Proclamation No. 3225 of March 7, 1958, Proclamation No. 3317 of September 24, 1959, 71 Stat. C12, 3 CFR, 1958 Supp., p. 19, 24 F.R. 7893). There is annexed hereto

a list of articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment in the renegotiations for which notice is given above.

The articles proposed for consideration in the renegotiations are identified in the annexed list by specifying the numbers of the paragraphs in tariff schedules of Title I of the Tariff Act of 1930, as amended, in which they are provided for together with the language used in such tariff paragraphs to provide for such articles.

No article will be considered in the renegotiations for possible modification of duties or other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment unless it is included, specifically or by reference, in the annexed list or unless it is subsequently included in a supplementary public list. Only duties on the articles listed imposed under the paragraphs of the Tariff Act of 1930 specified with regard to such articles will be considered for a possible decrease, but additional or separate ordinary duties on such articles imposed under any other provisions of law may be bound against increase as an assurance that the concession under the listed paragraph will not be nullified. In the event that an article which as of August 1, 1959, was regarded as classifiable under a description included in the list is excluded therefrom by judicial decision or otherwise prior to the conclusion of the trade agreement negotiations, the list will nevertheless be considered as including such article.

Pursuant to section 4 of the Trade Agreements Act, as amended, and paragraph 5 of Executive Order 10082 of October 5, 1949, as amended, information and views as to any aspect of the proposals announced in this notice may be submitted to the Committee for Reciprocity Information in accordance with the announcement of this date issued by that Committee.<sup>1</sup> Any matters appropriate to be considered in connection with the negotiations proposed above may be presented.

Public hearings in connection with the "peril point" investigation of the United States Tariff Commission in connection with the articles included in the annexed list, pursuant to section 3 of the Trade Agreements Extension Act of 1951, as amended, are the subject of an announcement of this date issued by that Commission.<sup>2</sup>

By direction of the Interdepartmental Committee on Trade Agreements this 22d day of October 1959.

JOHN A. BIRCH,  
Chairman, Interdepartmental  
Committee on Trade Agree-  
ments.

<sup>1</sup> See Committee for Reciprocity Information, F.R. Doc. 59-9019, *infra*.

<sup>2</sup> See Tariff Commission, F.R. Doc. 59-9021, *infra*.

LIST OF ARTICLES IMPORTED INTO THE UNITED STATES PROPOSED FOR CONSIDERATION IN TRADE AGREEMENT RENEGOTIATIONS

TARIFF ACT OF 1930

Title I—Dutiable List

- Par. 1108 Woven fabrics, weighing not more than four ounces per square yard, wholly or in chief value of wool, whether or not the warp is wholly of cotton, or other vegetable fiber.
- 1109(a) Woven fabrics, weighing more than four ounces per square yard, wholly or in chief value of wool.

[F.R. Doc. 59-9020; Filed, Oct. 22, 1959; 12:00 m.]

## COMMITTEE FOR RECIPROCITY INFORMATION

### WOOLEN AND WORSTED FABRICS

#### Renegotiation of United States Concessions Under General Agreement on Tariffs and Trade

Submission of information to the Committee for Reciprocity Information. Closing date for applications to appear at hearing November 20, 1959.

Closing date for submission of briefs November 20, 1959.

Public hearings open December 1, 1959.

The Interdepartmental Committee on Trade Agreements<sup>1</sup> has issued on this day a notice of intention to renegotiate the United States tariff concessions in items 1108 (and the note thereto) and 1109(a) in Part I of Schedule XX to the General Agreement on Tariffs and Trade and in item 1109(a) in Part I of Schedule XX to the Torquay Protocol to the General Agreement on Tariffs and Trade. Annexed to the notice of the Interdepartmental Committee on Trade Agreements is a list of articles imported into the United States to be considered in the renegotiations. Such renegotiations may result, under certain circumstances, in rates of duty higher than the rates currently applicable under the tariff quota proclaimed by the President pursuant to the note to item 1108 in Part I of Schedule XX to the General Agreement, and, under other circumstances, in rates of duty lower than the rates now applicable under the tariff quota.

Pursuant to paragraph 5 of Executive Order 10082 of October 5, 1949, as amended (3 CFR, 1949-1953 Comp., pp. 281, 355), the Committee for Reciprocity Information hereby gives notice that all applications for oral presentation of views in regard to the proposed renegotiations shall be submitted to the Committee for Reciprocity Information not later than November 20, 1959. The application must indicate an estimate of the time required for oral presentation.

<sup>1</sup> See Interdepartmental Committee on Trade Agreements, F.R. Doc. 59-9020, *supra*.

Written statements shall be submitted not later than November 20, 1959. Such communications shall be addressed to "Committee for Reciprocity Information, Tariff Commission Building, Washington 25, D.C." Fifteen copies of written statements, either typed, printed, or duplicated, shall be submitted, of which one copy shall be sworn to.

Written statements submitted to the Committee, except information and business data proffered in confidence, shall be open to inspection by interested persons. Information and business data proffered in confidence shall be submitted on separate pages clearly marked "For Official Use Only of the Committee for Reciprocity Information".

Public hearings will be held before the Committee for Reciprocity Information, at which oral statements will be heard, beginning at 2 p.m. on December 1, 1959, in the Hearing Room in the Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Witnesses who make application to be heard will be advised regarding the time and place of their individual appearances. Appearances at hearings before the Committee may be made only by or on behalf of those persons who have filed written statements and who have within the time prescribed made written application for oral presentation of views. Statements made at the public hearings shall be under oath.

Persons may present their views regarding any matter appropriate to be considered in connection with the proposed renegotiations. Copies of the list attached to the notice of intention to conduct the renegotiations may be obtained from the Committee for Reciprocity Information at the address designated above and may be inspected at the field offices of the Department of Commerce.

The United States Tariff Commission has today announced public hearings<sup>2</sup> on the import items covered by the list annexed to the notice of intention to conduct the renegotiations to run concurrently with the hearings of the Committee for Reciprocity Information. Oral testimony and written information submitted to the Tariff Commission will be made available to and will be considered by the Interdepartmental Committee on Trade Agreements. Consequently, those whose interests relate only to import products included in the foregoing list, and who appear before the Tariff Commission, need not, but may if they wish, appear also before the Committee for Reciprocity Information.

By direction of the Committee for Reciprocity Information this 22d day of October 1959.

EDWARD YARDLEY,  
Secretary, Committee for  
Reciprocity Information.

[F.R. Doc. 59-9019; Filed, Oct. 22, 1959; 12:00 m.]

<sup>2</sup> See Tariff Commission, F.R. Doc. 59-9021, *infra*.

# TARIFF COMMISSION

[3-8]

## WOOLEN AND WORSTED FABRICS

### Articles Listed for Consideration in Proposed Trade-Agreement Renegotiations

The Interdepartmental Committee on Trade Agreements<sup>1</sup> has issued public notice of the intention of this Government to renegotiate the tariff concessions granted by the United States in the General Agreement on Tariffs and Trade on certain articles. On October 22, 1959, in accordance with section 3 of the Trade Agreements Extension Act of 1951, as amended, the President furnished to the United States Tariff Commission a list (hereinafter referred to as the "President's List") of the articles to be considered in the proposed renegotiations, and requested the Tariff Commission to make a "peril point" investigation and report with respect to each such article, as provided in said section 3 of the Trade Agreements Extension Act of 1951. The President's List is attached to this notice.<sup>2</sup>

**Investigation instituted.** Pursuant to said section 3 of the Trade Agreements Extension Act of 1951, the United States Tariff Commission has instituted an investigation with respect to the articles included in the President's List.

**Purpose of investigation.** The purpose of the investigation is to obtain the facts necessary to enable the Tariff Commission to formulate findings (known as "peril point" findings) for inclusion in a report to the President with respect to each article included in the President's List as to (1) the limit to which the modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment may be extended in order to carry out the purpose of section 350 of the Tariff Act of 1930, as amended (Trade Agreements Act), without causing or threatening serious injury to the domestic industry producing like or directly competitive articles, and (2) if increases in duties or additional import restrictions are required to avoid serious injury to the domestic industry producing like or directly competitive articles, the minimum increases in duties or additional import restrictions required.

**Public hearing.** A public hearing in connection with this investigation will be held beginning at 10:00 a.m., e.s.t., on December 1, 1959, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Interested parties desiring to appear and present oral testimony should notify the Secretary of the Commission in writing by November 20, 1959.

**Written statements in lieu of appearance at hearing.** Interested parties may

present their information and views through the submission of written statements in lieu of appearances at the public hearing. Such statements must be under oath and will be given the same consideration as oral testimony presented at the hearing, and, except for information submitted and accepted in confidence, will be made available for inspection by interested parties. Twenty copies of written statements shall be submitted, only one of which need be sworn to. Such statements should be submitted as early as possible, but not later than November 20, 1959.

**Related hearings before the Committee for Reciprocity Information.**<sup>3</sup> Published concurrently with this notice is an announcement by the Committee for Reciprocity Information regarding public hearings to be held by that Committee on the articles included in the President's List, and on other matters, to begin on December 1, 1959, at 2:00 p.m., e.s.t., in the Hearing Room, Tariff Commission Building. Arrangements will be made to permit persons desiring to appear at both Tariff Commission and Committee for Reciprocity Information hearings to do so without conflict in scheduling, and, where possible, to present their testimony at both hearings on the same day. Oral testimony and written statements of interested parties received by the Tariff Commission in connection with this investigation will be made available by the Tariff Commission to the Committee for Reciprocity Information. Accordingly, as stated in the Committee for Reciprocity Information notice, appearance before the Committee for Reciprocity Information for the purpose of submitting the same information, although permissible, will not be necessary.

**Communications to be addressed to Secretary.** All communications regarding the Tariff Commission investigation, including requests for appearance at the Tariff Commission hearings, should be addressed to the Secretary, United States Tariff Commission, Washington 25, D.C.

Issued: October 22, 1959.

By direction of the United States Tariff Commission.

[SEAL] DONN N. BENT,  
Secretary.

[F.R. Doc. 59-9021; Filed, Oct. 22, 1959;  
12:00 m.]

## FEDERAL POWER COMMISSION

[Docket No. G-19657]

### ARKANSAS LOUISIANA GAS CO.

#### Order Providing for Hearing and Suspending Proposed Revised Tariff Sheet and Notice of Change in Rate Schedule

OCTOBER 14, 1959.

Arkansas Louisiana Gas Company  
(Arkansas Louisiana) on September 14,

<sup>3</sup> See Committee for Reciprocity Information, F.R. Doc. 59-9019, *supra*.

1959, tendered for filing Fifth Revised Sheet No. 108 to its FPC Gas Tariff, Original Volume No. 2, comprising a portion of its Rate Schedule XFS-6, and a Notice of Change in Rate, Supplement No. 8 to its Rate Schedule XFS-2. The increases, proposed to become effective November 1, 1959, reflect an annual increase in rates of \$13,176 over rates presently in effect subject to refund in Docket Nos. G-11294, G-13459, and G-16508 for sales of gas to Texas Eastern Transmission Corporation. The increases are based on periodic escalation clauses in the contracts.

The above proposed changes in rates, charges, classifications, or services have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications, and services contained in Arkansas Louisiana's FPC Gas Tariff, Original Volume No. 2 as proposed to be amended by Fifth Revised Sheet No. 108 and Arkansas Louisiana's Notice of Change in Rate Schedule XFS-2, designated as Supplement No. 8 to Rate Schedule XFS-2, and that the above-designated tariff sheet and supplement, and the rates proposed therein be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Chapter I) a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the rates, charges, classifications, and services contained in Arkansas Louisiana's FPC Gas Tariff, Original Volume No. 2 as proposed to be amended by Fifth Revised Sheet No. 108 and Arkansas Louisiana's Notice of Change in Rate Schedule XFS-2, designated as Supplement No. 8 to Rate Schedule XFS-2.

(B) Pending such hearing, and decision thereon, Supplement No. 8 to Rate Schedule XFS-2 and Fifth Revised Sheet No. 108 to Arkansas Louisiana's FPC Gas Tariff Original Volume No. 2 are hereby suspended and the use thereof deferred until April 1, 1960, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIE,  
Secretary.

[F.R. Doc. 59-8938; Filed, Oct. 22, 1959;  
8:45 a.m.]

<sup>1</sup> See Interdepartmental Committee on Trade Agreements, F.R. Doc. 59-9021, *supra*.

<sup>2</sup> Filed as part of original document.

[Docket Nos. G-19658—G-19667]

**ATLANTIC REFINING CO. ET AL.****Order for Hearing and Suspending  
Proposed Changes in Rates<sup>1</sup>**

OCTOBER 15, 1959.

In the matters of The Atlantic Refining Company (Operator), et al., Docket No. G-19658; The Atlantic Refining Company, Docket No. G-19659; Magnolia Petroleum Company, Docket No. G-19660; Magnolia Petroleum Company (Operator), et al., Docket No. G-19661; Arkansas Fuel Oil Corporation, Docket

No. G-19662; Arkansas Fuel Oil Corporation (Operator), et al., Docket No. G-19663; Standard Oil Company of Texas (Operator), Docket No. G-19664; Tidewater Oil Company, Docket No. G-19665; Continental Oil Company (Operator), et al., Docket No. G-19666; The California Company (Operator), et al., Docket No. G-19667.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser	Notice of change dated—	Tendered	Effective date	Date suspended until—
G-19658...	The Atlantic Refining Co. (operator), et al.	151	1	Tennessee Gas Transmission Co.	9-9-59	9-15-59	11-1-59	4-1-60
G-19659...	The Atlantic Refining Co.	205	1	Kansas-Nebraska Natural Gas Co., Inc.	9-10-59	9-15-59	11-1-59	4-1-60
G-19659...	do.	125	2	Tennessee Gas Transmission Co.	9-10-59	9-15-59	11-1-59	4-1-60
G-19659...	do.	7	4	do.	9-18-59	9-21-59	11-1-59	4-1-60
G-19660...	Magnolia Petroleum Co.	152	9	Hassie Hunt Trust	9-11-59	9-15-59	11-1-59	4-1-60
G-19660...	do.	2 146	7	Shell Oil Co.	9-11-59	9-15-59	11-1-59	4-1-60
G-19660...	do.	2 149	8	do.	9-11-59	9-15-59	11-1-59	4-1-60
G-19660...	do.	2 151	7	do.	9-11-59	9-15-59	11-1-59	4-1-60
G-19660...	do.	2 82	14	Texas Eastern Transmission Corp.	9-15-59	9-16-59	11-1-59	4-1-60
G-19661...	Magnolia Petroleum Co. (operator), et al.	150	9	Hassie Hunt Trust	9-11-59	9-15-59	11-1-59	4-1-60
G-19662...	Arkansas Fuel Oil Corp.	4 54	6	Texas Eastern Transmission Corp.	9-17-59	9-21-59	11-1-59	4-1-60
G-19662...	do.	4 55	6	do.	9-17-59	9-21-59	11-1-59	4-1-60
G-19663...	Arkansas Fuel Oil Corp. (operator), et al.	53	2	do.	9-17-59	9-21-59	11-1-59	4-1-60
G-19664...	Standard Oil Co. of Texas (operator).	22	6	El Paso Natural Gas Co.	Not dated	9-21-59	10-22-59	3-22-60
G-19665...	Tidewater Oil Co.	87	2	Texas Eastern Transmission Corp.	9-15-59	9-21-59	11-1-59	4-1-60
G-19665...	do.	9	8	Tennessee Gas Transmission Co.	9-18-59	9-21-59	11-1-59	4-1-60
G-19666...	Continental Oil Co. (operator), et al.	4	6	do.	9-18-59	9-21-59	11-1-59	4-1-60
G-19667...	The California Co. (operator), et al.	1	24	Texas Eastern Transmission Corp.	9-21-59	9-24-59	11-1-59	4-1-60

<sup>1</sup> The stated effective dates are those requested by Respondents, or the first day after the expiration of statutory notice, whichever is later.

<sup>2</sup> Rate in effect subject to refund in Docket No. G-19695 (also subject to orders in Docket Nos. G-16426 and G-15905).

<sup>3</sup> Rate in effect subject to refund in Docket No. G-16620 (also subject to orders in Docket Nos. G-15723 and G-13522).

<sup>4</sup> Rate in effect subject to refund in Docket No. G-16654 (also subject to order in Docket No. G-13377).

<sup>5</sup> Rate in effect subject to refund in Docket No. G-13187.

<sup>6</sup> Rate in effect subject to refund in Docket No. G-16668 (also subject to orders in Docket Nos. G-15836, G-13527, G-11329, and G-9513).

In support of their proposed rate increases, Atlantic, Tidewater and Continental submit price renegotiation letters from Tennessee Gas Transmission Company, cite the applicable contract provision, and state that the contracts were negotiated at arm's-length. Additionally, Continental indicates that its proposed rate is below the current area price level, Tidewater states that the proposed rate is just and reasonable, and Atlantic proposes the desirability of its pricing provisions in permitting lower initial rates. In its periodic increase sought from Kansas-Nebraska Natural Gas Company, Atlantic makes the same statements.

Arkansas Fuel and Tidewater, in their sales to Texas Eastern Transmission Corporation, cite their periodic increase pro-

visions and state that the contracts were negotiated at arm's-length. Arkansas Fuel indicates that lower initial rates are permitted by its pricing provisions, and Tidewater recites that the rates it seeks are just and reasonable.

Magnolia states that its proposed increases are provided by contracts negotiated at arm's-length, that the law of supply and demand should govern natural gas prices, and that Respondent's cost of doing business has increased rapidly.

Standard Oil of Texas cites contract provisions upon which its proposed favored-nation price rise is based, and submits a notification letter from El Paso which indicates that the triggering increases are in effect subject to refund. El Paso has filed a formal protest of the rate, requesting rejection.

The California Company states that its proposed rate was part of the consideration for its contract with Texas Eastern, and that such rate is less than

the market price for gas in the same general area.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Chapter I) public hearings be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearing and decision thereon, each of the aforementioned supplements is suspended and the use thereof deferred until the date specified in the above-designated "Rate Suspended Until" column and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIE,  
Secretary.

[F.R. Doc. 59-8939; Filed, Oct. 22, 1959; 8:45 a.m.]

[Docket Nos. G-19633—G-19647]

**RUSSELL MAGUIRE ET AL.****Order for Hearings and Suspending  
Proposed Changes in Rates<sup>1</sup>**

OCTOBER 15, 1959.

In the matter of Russell Maguire, Docket No. G-19633; Russell Maguire (Operator), et al., Docket No. G-19634; Cities Service Production Company (Operator), et al., Docket No. G-19635; Cities Service Oil Company, Docket No. G-19636; Cities Service Oil Company (Operator), et al., Docket No. G-19637; Anderson-Prichard Oil Corporation (Operator), et al., Docket No. G-19638; Arkansas-Fuel Oil Corporation, Docket No. G-19639; Arkansas Fuel Oil Corporation (Operator), et al., Docket No. G-19640; Pan American Petroleum Corporation, Docket No. G-19641; Pan

<sup>1</sup> This order does not provide for the consolidation for hearing or disposition of the separately docketed matters covered herein, nor should it be so construed.

American Petroleum Corporation (Operator), et al., Docket No. G-19642; Champlin Oil & Refining Company, (Operator), et al., Docket No. G-19643; Anderson-Prichard Oil Corporation, Docket No. G-19644; F. A. Callery, Inc., et al., Docket No. G-19645; Tidewater Oil Company (Operator), et al., Docket

No. G-19646; Tidewater Oil Company, Docket No. G-19647.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser	Notice of change dated—	Date tendered	Effective date unless suspended	Date suspended until <sup>1</sup>
G-19633..	Russell Maguire....	1	5	Tennessee Gas Transmission Co.	9-16-59	9-21-59	10-22-59	3-22-59
G-19634..	Russell Maguire (operator), et al.	2 4	5 6	Texas Eastern Transmission Corp.	9-18-59 9-18-59	9-21-59 9-21-59	11-1-59 11-1-59	4-1-59 4-1-59
G-19635..	Cities Service Production Co. (operator), et al.	1	11	United Fuel Gas Co.	9-18-59	9-21-59	11-1-59	4-1-59
G-19636..	Cities Service Oil Co.	2	10	Texas Eastern Transmission Co.	9-18-59	9-21-59	11-1-59	4-1-59
G-19637..	Cities Service Oil Co. (operator), et al.	103 128	6 1	do.....	9-18-59	9-21-59	11-1-59	4-1-59
G-19638..	Anderson-Prichard Oil Corp. (operator), et al.	85	8	El Paso Natural Gas Co.	9-14-59	9-18-59	10-25-59	3-25-59
G-19639..	Arkansas Fuel Oil Corp.	14 52 49	10 6 8	Texas Eastern Transmission Corp.	9-17-59 9-17-59	9-21-59 9-21-59	11-1-59 11-1-59	4-1-59 4-1-59
G-19640..	Arkansas Fuel Oil Corp. (operator), et al.	48 50 53	8 10 9	United Fuel Gas Co.	9-17-59 9-17-59	9-21-59 9-21-59	11-1-59 11-1-59	4-1-59 4-1-59
G-19641..	Pan American Petroleum Corp.	53 78	7 11	United Fuel Gas Co.	9-17-59	9-21-59	11-1-59	4-1-59
G-19642..	Pan American Petroleum Corp. (operator), et al.	88 174 190	11 11 10	H. L. Hunt..... United Fuel Gas Co.	9-17-59 9-14-59	9-21-59 9-17-59	11-1-59 11-1-59	4-1-59 4-1-59
G-19643..	Champlin Oil & Refining Co. (operator), et al.	27	12	Texas Eastern Transmission Corp.	9-16-59	9-18-59	11-1-59	4-1-59
G-19644..	Anderson-Prichard Oil Corp.	1 72 73	14 12 12	El Paso Natural Gas Co.	9-14-59 9-14-59	9-18-59 9-18-59	10-25-59 10-25-59	3-25-59 3-25-59
G-19645..	F. A. Callery, Inc., et al.	8	2	do.....	9-18-59	9-21-59	10-22-59	3-22-59
G-19646..	Tidewater Oil Co. (operator), et al.	25 60 57	16 5 6	United Fuel Gas Co.	9-15-59 9-15-59	9-21-59 9-21-59	11-1-59 11-1-59	4-1-59 4-1-59
G-19647..	Tidewater Oil Co....	24 64	11 14	United Fuel Gas Co. Texas Eastern Transmission Corp.	9-15-59 9-15-59	9-21-59 9-21-59	11-1-59 11-1-59	4-1-59 4-1-59

<sup>1</sup> The stated effective dates are those requested by Respondents, or the first day after the expiration of statutory notice, whichever is later.

<sup>2</sup> And until such further time as each is made effective in the manner prescribed by the Natural Gas Act.

- <sup>3</sup> Rate effective subject to refund in Docket No. G-17603.
- <sup>4</sup> Rate effective subject to refund in Docket No. G-16487.
- <sup>5</sup> Rate effective subject to refund in Docket No. G-16652.
- <sup>6</sup> Rate effective subject to refund in Docket No. G-16895.
- <sup>7</sup> Rate effective subject to refund in Docket No. G-16654.
- <sup>8</sup> Rate effective subject to refund in Docket No. G-16517.
- <sup>9</sup> Rate effective subject to refund in Docket No. G-16653.
- <sup>10</sup> Rate effective subject to refund in Docket No. G-16515.
- <sup>11</sup> Rate effective subject to refund in Docket No. G-17053.
- <sup>12</sup> Rate effective subject to refund in Docket No. G-16516.
- <sup>13</sup> Rate effective subject to refund in Docket No. G-18095.
- <sup>14</sup> Rate effective subject to refund in Docket No. G-14044.
- <sup>15</sup> Rate effective subject to refund in Docket No. G-13987.
- <sup>16</sup> Rate effective subject to refund in Docket No. G-16594.
- <sup>17</sup> Rate effective subject to refund in Docket No. G-16626.
- <sup>18</sup> Rate effective subject to refund in Docket No. G-16593.
- <sup>19</sup> Rate effective subject to refund in Docket No. G-16627.

Russell Maguire, in support of its proposed reetermined rate increase, and Russell Maguire (Operator), et al., in support of its proposed periodic increase, state the contracts were arrived at through arm's length bargaining and production costs have increased.

Cities Service Oil Company, in support of its proposed periodic rate increases, states that its increases are of fixed amount and in accordance with the contract provisions, and the increased rates are not unreasonable and are below the present market value and going price of gas in the area.

Cities Service Production Company (Operator), et al. (Cities Service), in support of its proposed periodic rate

increase, states that the increased price is provided by the contract which was negotiated at arm's length, and it would be unfair to deny seller such higher price during the later life of the contract after earlier deliveries had been made at a lower rate. Cities Service also states that the increased price is not unreasonable and is less than the market value and going price of gas in the area.

Arkansas Fuel Oil Corporation (Arkansas) and Arkansas Fuel Oil Corporation (Operator), et al. (Arkansas Operator), in support of their proposed periodic rate increases, cite the contract provisions and state that the contracts were negotiated at arm's length. Arkansas, for its gas sales to Texas Eastern

Transmission Corporation, also states that the pricing arrangement is common in long-term contracts for the sale of large volumes of gas in the area. Arkansas, for its gas sales to United Fuel Gas Company and Arkansas Operator, for its gas sales to Texas Eastern Transmission Company further state that the periodic price escalations are beneficial to both buyer and seller in permitting initial deliveries at a low price during the time buyer's unamortized capital investment is high and enabling seller to receive progressively higher rates contemporaneously with increases in costs.

Anderson-Prichard Oil Corporation (Operator), et al., in support of its proposed favored-nation rate increase, quotes the contract favored-nation provisions, cites El Paso's favored-nation notification letter, states that the increased rate is not excessive, is just and reasonable, and is not greater than the price being paid for other gas in the area. El Paso has protested the filing, and requested rejection of it.

Pan American Petroleum Corporation and Pan Petroleum Corporation (Operator), et al., in support of their proposed periodic rate increases, state that the increases are a matter of contractual obligation arising from a contract entered into as a result of arm's-length bargaining, the proposed rate is an integral part of the initial rate schedule, the price of gas is below the price of competing fuels considering intrinsic value, the cost of structural steel, tubular goods, labor, exploration and development, and drilling have steadily increased, and the proposed rate is in line with currently negotiated contract prices in the same general area.

Tidewater Oil Company and Tidewater Oil Company (Operator), et al. (hereinafter jointly referred to as Tidewater), in support of their proposed periodic rate increases, cite arm's-length bargaining. For gas sold to United Fuel Gas Company, Tidewater also asserts that the proposed rates are part of the initial rate schedules, and do not exceed the going price for gas in the area. For gas sold to Texas Eastern Transmission Corporation, Tidewater further states that the increased rates constitute an integral part of the consideration upon which the contracts are based, and they are less than rates offered for similar gas in the same area.

Champlin Oil & Refining Company (Operator), et al. (Champlin), in support of its proposed periodic rate increase, states that its increased rate is provided by a contract negotiated at arm's length, the periodic rate increases were provided for to offset increased costs during the term of the contract, and the increased rate constitutes an integral part of such contract.

Anderson-Prichard Oil Corporation (Anderson) and F. A. Callery, Inc., et al. (Callery), in support of their proposed favored-nation rate increases, submit favored-nation notification letters from El Paso. Anderson also states that these increased rates are provided by contracts negotiated at arm's length, and that they entered into such contracts in anticipation that the entire schedule of

prices contained therein would be effective. Callery also cites the favored-nation provisions of its contract, but presents no other supporting statement. El Paso has protested each of the filings, and requested rejection of them.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Chapter I) public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, Supplement No. 5 to Russell Maguire's FPC Gas Rate Schedule No. 1 and Supplement No. 2 to Callery's FPC Gas Rate Schedule No. 8 are hereby suspended and the use thereof deferred until March 22, 1959; Supplement No. 8 to Anderson-Prichard Oil Corporation (Operator), et al.'s FPC Gas Rate Schedule No. 85 and Supplement Nos. 7, 2 and 2 to Anderson-Prichard Oil Corporation's FPC Gas Rate Schedule Nos. 1, 72, and 73, respectively, are hereby suspended and the use thereof deferred until March 25, 1959; Supplement Nos. 6 and 4 to Russell Maguire (Operator), et al.'s FPC Gas Rate Schedule Nos. 2 and 4, respectively, Supplement No. 11 to Cities Service Production Company (Operator), et al.'s FPC Gas Rate Schedule No. 1, Supplement Nos. 10 and 6 to Cities Service Oil Company's FPC Gas Rate Schedule Nos. 2 and 103, respectively, Supplement No. 1 to Cities Service Oil Company (Operator), et al.'s FPC Gas Rate Schedule No. 128, Supplement Nos. 10, 8, and 6 to Arkansas Fuel Oil Corporation's FPC Gas Rate Schedule Nos. 14, 49, and 52, respectively, Supplement Nos. 10, 9, and 7 to Arkansas Fuel Oil Corporation (Operator), et al.'s FPC Gas Rate Schedule Nos. 48, 50, and 53, respectively, Supplement Nos. 11 and 11 to Pan American Petroleum Corporation's FPC Gas Rate Schedule Nos. 78 and 88, respectively, Supplement Nos. 13 and 8 to Pan American Petroleum Corporation (Operator), et al.'s FPC Gas Rate Schedule Nos. 174 and 190, respectively, Supplement No. 2 to Champlin Oil & Refining Company (Operator), et al.'s FPC Gas Rate Schedule No. 27, Supplement Nos. 7, 6, and 5 to Tidewater Oil Company (Operator), et al.'s FPC Gas Rate Schedule Nos. 25, 57, and 60, respectively, and Supplement Nos. 11 and 4 to Tidewater Oil Company's FPC Gas Rate Schedule Nos. 24 and 64, respectively, are hereby sus-

pended and the use thereof deferred until April 1, 1959; each of the aforementioned supplements shall remain suspended until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby shall be changed until the respective proceeding has been disposed of or until the related period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-8940; Filed, Oct. 22, 1959;  
8:45 a.m.]

[Docket Nos. G-17804, G-17816]

### CALVERT DRILLING, INC., ET AL.

#### Notice of Applications and Date of Hearing

OCTOBER 19, 1959.

In the matters of Calvert Drilling, Inc., et al., Docket No. G-17804; An-Son Petroleum Corporation, Docket No. G-17816.

Take notice that on February 9, 1959, Calvert Drilling, Inc., et al.,<sup>1</sup> (Calvert) in Docket No. G-17804, and on February 11, 1959, An-Son Petroleum Corporation (An-Son) in Docket No. G-17816, filed applications pursuant to Section 7 of the Natural Gas Act as follows:

(1) An-Son, in Docket No. G-17816, for permission and approval to abandon natural gas service to Colorado Interstate Gas Company (Colorado) from certain units in the Laverne Field, Harper County, Oklahoma, covered by a gas sales contract dated October 31, 1957, now on file as Calvert Drilling, Inc. (Operator), et al., FPC Gas Rate Schedule No. 4.

(2) Calvert, et al., in Docket No. G-17804, for authority to continue the services proposed to be abandoned by An-Son in said Docket No. G-17816.

By instrument of assignment dated May 1, 1958, An-Son conveyed to Calvert the leases, among others, dedicated to the above-mentioned contract, which instrument is on file as Supplement No. 1 to the aforesaid Calvert Drilling, Inc. (Operator), et al., FPC Gas Rate Schedule No. 4.

Calvert proposes to continue the subject service to Colorado under the terms of the original contract.

These related matters should be heard on a consolidated record and disposed of

<sup>1</sup> Calvert is filing for itself and on behalf of the following working interest owners: Riddell Petroleum Corporation, Westland Oil Development Corporation, John F. Riddell, Josephine Freede, H. J. Freede, and W. J. Holliday, each of whom are signatory to the basic contract and were covered by An-Son's original certificate authorization issued June 2, 1953, in Docket No. G-13856.

as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 24, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 13, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-8955; Filed, Oct. 22, 1959;  
8:47 a.m.]

[Docket No. 18258 etc.]

### CATHERINE VAN DOREN ET AL.

#### Notice of Applications and Date of Hearing

OCTOBER 19, 1959.

In the matters of Catherine Van Doren,<sup>1</sup> Docket No. G-18258; Sun Oil Company, Docket No. G-18541; Lancaster Oil & Gas Company, Docket No. G-18579; Skelly Oil Company, Docket No. G-18584; Refugio Enterprises, Inc., Operator, et al.,<sup>2</sup> Docket No. G-18595; Union Oil Company of California, et al.,<sup>3</sup> Docket No. G-18663; Fred Whitaker, Operator, et al.,<sup>4</sup> Docket No. G-18683; R. L. Chance, Sr., Docket No. G-18760.

Take notice that each of the above Applicants has filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing each to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications, and any amendments thereto, which are on file with the Commission and open to public inspection.

The respective Applicants produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

See footnotes at end of document.

**Docket No., Field and Location, and Purchaser**

G-18258; Hugoton Field, Finney County, Kans.; Northern Natural Gas Co.

G-18541; Southeast Boyd Field, Beaver County, Okla.; Natural Gas Pipeline Co. of America.

G-18579; Washington District, Calhoun County, W. Va.; Hope Natural Gas Co.

G-18584; Wil Field, Edwards County, Kans.; Panhandle Eastern Pipe Line Co.

G-18595; Mission River Field, Refugio County, Tex.; AGSCO Minerals Corp.

G-18663; Southeast Boyd Area, Beaver County, Okla.; Natural Gas Pipeline Co. of America.

G-18683; Carthage and Bethany Fields, Banola County, Tex.; Texas Gas Transmission Corp.

G-18760; North New Taiton Area, Wharton County, Tex.; Tennessee Gas Transmission Co.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 30, 1959 at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules or practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 13, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,  
Secretary.

<sup>1</sup> Catherine Van Doren, nonoperator, is filing for her interest the subject acreage, production from which is proposed to be sold pursuant to a ratification agreement signed by E. S. Villines, Seller, and Northern Natural, Buyer, dated April 24, 1958, of a basic gas sales contract dated October 14, 1957, as amended, between Nathan Appleman, et al., Seller, and Northern Natural, Buyer. Applicant acquired her interest in the subject acreage by instrument of assignment dated May 12, 1958, from E. S. Villines and has become a signatory party to the basic gas sales contract to the extent of said assignment.

<sup>2</sup> Refugio Enterprises, Inc., Operator, Morgan Minerals Company, and D. H. Gelsler are filing jointly and are all signatory seller parties to the subject letter agreement.

<sup>3</sup> Union Oil Company of California is filing for itself and as agent for the following

co-owners: Investors Royalty Company, Inc., and R. H. Holland. Application covers three separate basic gas sales contracts each dated March 20, 1959. Each of the above-named parties is the sole signatory seller party to its own gas sales contract with Buyer.

<sup>4</sup> Fred Whitaker, Operator, is filing for himself and on behalf of the following non-operators: David G. Baird, B. L. & H. Drilling Company, H. J. Campbell, Cummings Diesel Sales of Colorado, Fort Worth Pipe & Supply Company, William A. Hanlon, Maurice Koodish, Trustee, Sadie Koodish, Fredrick Rauh, Mrs. Max Rittenbaum, D. A. Thomas, Valley Steel Products Company, William H. Wright, Saxon Harris, Glen Johnson and J. M. Lyle. Fred Whitaker and Glen R. Johnson are signatory seller parties to the subject gas sales contract, and the remaining above-named parties are also signatory seller parties to the contract through the signature of Fred Whitaker who has signed the contract as Attorney-in-Fact for said parties.

[F.R. Doc. 59-8956; Filed, Oct. 22, 1959; 8:47 a.m.]

[Project 2199]

## PUBLIC UTILITY DISTRICT NO. 1 OF SKAMANIA COUNTY, WASH.

### Notice of Application for License

OCTOBER 19, 1959.

Public notice is hereby given that Public Utility District No. 1 of Skamania County, Washington, of Stevenson, Washington, has filed application under the Federal Power Act (16 U.S.C. 791a-825r) for a license for proposed water-power Project No. 2199, to be known as the Little White Salmon River Hydroelectric Project and located on the Little White Salmon River and Rock Creek in Skamania County, Washington, near Willard and White Salmon, and to consist of intake works on the Little White Salmon River at approximately river mile 4.5; a covered conduit to a canal forebay discharging into a 11,200-foot long lined canal (No. 1) to a regulating reservoir on Rock Creek; an earth-fill dam with spillway across Rock Creek with 155 acre-feet of usable storage; a canal (No. 2) and dyke section about 8,400 feet long from the reservoir to the main tunnel adding about 45 acre-feet to the usable pondage; a concrete lined tunnel 8.6 feet in diameter and approximately 5,160 feet long from the terminus of Canal No. 2 to a surge tank; a variable-size concrete and steel lined tunnel about 2,480 feet long from the surge tank to the powerhouse; a powerhouse at river mile 0.25 on the Little White Salmon River, containing one 49,200-horsepower turbine directly connected to a 30,600-kilowatt generator; a 500-horsepower pump station at the United States Fish and Wildlife Service Willard Hatchery about 4,000 feet downstream from the intake works, which will return 15 cfs under approximately 200 feet head to the canal (No. 1); and about 18 miles of 115-kv transmission line from the powerhouse to North Bonneville.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR

1.8 or 1.10). The last date upon which protests or petitions may be filed is November 30, 1959. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-8957; Filed, Oct. 22, 1959; 8:48 a.m.]

[Docket No. G-18460]

## TENNESSEE GAS TRANSMISSION CO.

### Notice of Application and Date of Hearing

OCTOBER 19, 1959.

Take notice that Tennessee Gas Transmission Company (Applicant), a Delaware corporation with its principal place of business in Houston, Texas, filed, on May 5, 1959, an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the Applicant to sell natural gas from the Blanco State Unit II in the Aztec (Mesa Verde) Field, of San Juan County, New Mexico, to El Paso Natural Gas Company, which will transport the gas comingled with other gas to points outside of New Mexico where it will be sold for resale for ultimate public consumption.

The proposed sale of gas by Applicant as above stated will be made in accordance with the terms of a contract filed with the Commission on April 10, 1959 and designated as Tennessee Gas Transmission Company's Rate Schedule F-46. Provision is made for the payment by El Paso for the hydrocarbons extracted from gas produced by Applicant in addition to the price for the gas residue.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 23, 1959, at 9:30 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 9, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the

intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-8958; Filed, Oct. 22, 1959;  
8:48 a.m.]

[Project 2259]

## PORTLAND GENERAL ELECTRIC CO., ROUND BUTTE POWER PROJECT

### Notice of Land Withdrawal, Oregon

OCTOBER 19, 1959.

Conformable to the provisions of section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the land hereinafter described, insofar as title thereto remains in the United States is included in power project No. 2259 for which completed application for license (Major) was filed March 19, 1959. Under said section 24 all lands of the United States lying within the boundaries of the project, as delimited upon the maps filed in support thereof, are from said date of filing reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

#### WILLAMETTE MERIDIAN

- T. 11 S., R. 11 E.,  
Sec. 18: Lots 7, 8, 9, 10, 11, 12;  
Sec. 19: Lots 7, 8, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 20: Lots 3, 4, 5;  
Sec. 21: NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 22: NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 23: SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 25: Lots 2, 3, 4, 5, 6, 7, 8, 9, S $\frac{1}{2}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$   
SE $\frac{1}{4}$ ;  
Sec. 26: Lots 5, 6, 7, 8, N $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 27: Lots 3, 4, 5, 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$   
SE $\frac{1}{4}$ ;  
Sec. 28: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,  
SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 29: Lots 5, 6, 7, 8, 9, 10, E $\frac{1}{2}$ NE $\frac{1}{4}$ ,  
E $\frac{1}{2}$ SW $\frac{1}{4}$ .  
T. 11 S., R. 12 E.,  
Sec. 21: SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 22: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 23: SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 26: SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
Sec. 27: Lots 2, 3, 4, 5, 6, W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$   
NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 28: Lots 1, 2, 3, 4, 5, 6, 7, 8, NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$   
SE $\frac{1}{4}$ ;  
Sec. 29: Lots 1, 2, 3, 4, 5, 6, 7, 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 30: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12,  
S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$   
SE $\frac{1}{4}$ ;  
Sec. 32: N $\frac{1}{2}$ N $\frac{1}{2}$ ;  
Sec. 34: Lots 1, 2, 3, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$   
SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 35: W $\frac{1}{2}$ .  
T. 12 S., R. 12 E.,  
Sec. 2: Lots 3, 4, 5, 7, 8, 9, 10;  
Sec. 3: Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, SW $\frac{1}{4}$ ,  
W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 9: E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 10: Lots 1, 2, 3, 4, E $\frac{1}{2}$  Lot 5, Lots 6,  
8, 9, 11, 12, 13, 14;  
Sec. 11: W $\frac{1}{2}$ NW $\frac{1}{4}$ , west of Crooked River,  
N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 14: W $\frac{1}{2}$ ;  
Sec. 15: Lots 3, 4, 5;  
Sec. 16: NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;

- Sec. 21: W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 22: Lot 8;  
Sec. 23: NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
Sec. 27: Lots 1, 2, 5, 6, 7, 9, 10, 11, 12, 13,  
14, NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 28: W $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 29: E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ .

The area reserved pursuant to the filing of this application is approximately 8,915.91 acres of which approximately 2,757.69 acres are within the Warm Springs Indian Reservation, and 386.87 acres are within the Deschutes National Forest. Of the total project area approximately 5,082.80 acres have been withdrawn for the Central Oregon Land Utilization Project No. 2, of which approximately 600.25 acres are acquired lands. Some 340.35 acres are under Reclamation 1st. form withdrawal, (Deschutes Project).

A major part of the project area, approximately 7,632.96 acres, have been heretofore reserved for power purposes under Power Site Reserves Nos. 26, 63, 66, 480, Indian Power Site Reserve No. 2 and Power Projects Nos. 57, 484, 1447, 2030 or 2092.

Copies of project maps, Exhibits "J" sheet 1 (F.P.C. No. 2259-3) and "K" sheets 1 to 15 inclusive, (F.P.C. Nos. 2259-5 to 19 inclusive) filed in connection with this application have been transmitted to the Bureau of Land Management, Geological Survey, Forest Service, Bureau of Reclamation, and Bureau of Indian Affairs.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-8959; Filed, Oct. 22, 1959;  
8:48 a.m.]

## GENERAL SERVICES ADMINIS- TRATION

[Delegation of Authority 370]

### SECRETARY OF DEFENSE

#### Authority To Represent Interests of Federal Government in Atlanta Gas & Light Co. Rate Increase

1. Pursuant to the provisions of sections 201(a) (4) and 205 (d) and (e) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authority to represent the interest of the executive agencies of the Federal Government in the matter of Atlanta Gas Light Company Rate Increase, Docket No. 1480-U, File 19367, before the Georgia Public Service Commission, is hereby delegated to the Secretary of Defense.

2. The Secretary of Defense is hereby authorized to redelegate any of the authority contained herein to any officer, official or employee of the Department of Defense.

3. The authority conferred herein shall be exercised in accordance with the policies, procedures and controls prescribed by the General Services Admin-

istration, and shall further be exercised in cooperation with the responsible officers, officials and employees of General Services Administration.

4. This delegation of authority shall be effective October 7, 1959.

FRANKLIN FLOETE,  
Administrator.

OCTOBER 16, 1959.

[F.R. Doc. 59-8941; Filed, Oct. 22, 1959;  
8:45 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1180]

### ATLAS CORP. ET AL.

#### Order of Exemption

OCTOBER 19, 1959.

In the matter of Atlas Corporation, The Hidden Splendor Mining Company, Lisbon Uranium Corporation, Rio De Oro Uranium Mines, Inc., Radium King Mines, Inc., Mountain Mesa Uranium Corporation; File No. 812-1180.

Atlas Corporation, a closed-end management investment company, registered under the Investment Company Act of 1940 and The Hidden Splendor Mining Company, Lisbon Uranium Corporation, Rio De Oro Uranium Mines, Inc., and Radium King Mines, Inc., direct or indirect affiliated persons of Atlas Corporation, having filed a joint application and amendments thereto pursuant to section 17(b) of said Act for an order exempting from the provisions of said Act certain transactions among said affiliated persons incident to a merger of said affiliated persons and Mountain Mesa Uranium Corporation;

A public hearing having been held on said joint application after appropriate notice, the Commission having examined the record and having this day issued its findings and opinion in the matter; on the basis of such findings and opinion:

It is ordered, That the transactions among affiliated persons of Atlas Corporation incident to the merger of The Hidden Splendor Mining Company, Lisbon Uranium Corporation, Rio De Oro Uranium Mines, Inc., Radium King Mines, Inc., and Mountain Mesa Uranium Corporation, as set forth in said findings and opinion, be, and the same hereby are, exempted from the provisions of section 17(a) of said Act, pursuant to the provisions of section 17(b) of said Act, effective forthwith, provided, however, that the participation of the holders of stock of Lisbon Uranium Corporation shall not be reduced through the payment of dividends on such stock subsequent to the date of this order and prior to the effective date of the merger.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F.R. Doc. 59-8949; Filed, Oct. 22, 1959;  
8:47 a.m.]

# DEPARTMENT OF LABOR

## Wage and Hour Division LEARNER EMPLOYMENT CERTIFICATES

### Issuance to Various Industries

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), Administrative Order No. 485 (23 F.R. 200) and Administrative Order No. 507 (23 F.R. 2720), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

**Apparel Industry Learner Regulations** (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Adamsville Garment Co., Inc., Adamsville, Tenn.; effective 10-9-59 to 10-8-60 (men's and boys' sport and dress shirts).

Blue Bell, Inc., Arab, Ala.; effective 10-17-59 to 10-16-60 (men's and boys' denim dungarees).

Blue Bell, Inc., Tishomingo County, Belmont, Miss.; effective 10-13-59 to 10-12-60 (girls' and misses' shorts and slacks; boys' and men's trousers).

Blue Bell, Inc., Oneonta, Ala.; effective 10-17-59 to 10-16-60 (men's and boys' denim bib overalls, coveralls).

Crystal Springs Shirt Corp., Crystal Springs, Miss.; effective 10-21-59 to 10-20-60 (boys' shirts).

Lansford Apparel Co., West Patterson Street, Lansford, Pa.; effective 10-23-59 to 10-22-60 (children's dresses).

Meyers and Son Manufacturing Co., Inc., First and Jefferson Streets, Madison, Ind.; effective 10-9-59 to 10-8-60 (men's one piece work suits).

Orangeburg Manufacturing Co., 345 Pine Street, Orangeburg, S.C.; effective 10-14-59 to 10-13-60 (children's cotton dresses).

Oshkosh B'Gosh, Inc., 112 Otter Avenue, Oshkosh, Wis.; effective 10-9-59 to 10-8-60 (men's and women's work clothing; children's overalls, coveralls, etc.).

Press Dress & Uniform Co., Hummelstown, Pa.; effective 10-19-59 to 10-18-60 (maids' and nurses' uniforms and cotton dresses).

Fred Ronald Manufacturing Co., 3339 Main Street, Parsons, Kans.; effective 10-13-59 to 10-12-60 (boys' pants and shirts).

Savada Brothers, Inc., 34-46 South Laurel Street, Bridgeton, N.J.; effective 10-8-59 to 10-7-60 (boys' sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Elloree Garment Corp., Elloree, S.C.; effective 10-7-59 to 10-6-60; 10 learners (ladies' pajamas and gowns).

Eugenia Sportswear, 873 Peace Street, Hazleton, Pa.; effective 10-13-59 to 10-12-60; five learners (children's snow suits).

Lacy Manufacturing Co., Inc., 901 Adele Street, Martinsville, Va.; effective 10-8-59 to 10-7-60; five learners engaged in the manufacture of men's and boys' sports jackets.

McTague Manufacturing Co., Inc., 16 West Presqueisle Street, Philipsburg, Pa.; effective 10-10-59 to 10-9-60; 10 learners (men's and boys' jackets).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

C & D Sportswear Corp., Adel, Ga.; effective 10-9-59 to 4-8-60; 15 learners (men's and boys' sport shirts).

La Follette Shirt Co., Inc., 125 First Street, La Follette, Tenn.; effective 10-6-59 to 4-5-60; 40 learners (men's dress shirts).

Sustan Garments, Inc., Winnsboro, La.; effective 10-15-59 to 4-14-60; 100 learners (sportswear and outerwear, men's and boys' cotton trousers).

The Warner Brothers Co., Marianna, Fla.; effective 10-7-59 to 4-6-60; 40 learners (corsets and brassieres).

**Hosiery Industry Learner Regulations** (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

The following learner certificates were issued authorizing the employment of five percent of the total number of factory production workers for normal labor turnover purposes.

Balfour Hosiery Co., Burlington Industries, Inc., Spero Rd., Asheboro, N.C.; effective 10-12-59 to 10-11-60 (seamless).

Ridgeview Hosiery Mill Co., Newton, N.C.; effective 10-24-59 to 10-23-60 (seamless, full-fashioned).

The following learner certificate was issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Wee-Sox Hosiery Mills, Inc., Randleman, N.C.; effective 10-12-59 to 10-11-60; five learners (seamless).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Burlington Industries, Inc., Scottsboro Hosiery Plant, Scottsboro, Ala.; effective 10-7-59 to 4-6-60; 25 learners (seamless).

Claussner Hosiery Co., Plant No. 2, Seamless Division, 30th and Adams Streets, Paducah, Ky.; effective 10-7-59 to 4-6-60; 30 learners (seamless).

Magnet Mills, Inc., 308 Cullom Street, Clinton, Tenn.; effective 10-9-59 to 4-8-60; 30 learners (full-fashioned, seamless).

Wee-Sox Hosiery Mills, Inc., Randleman, N.C.; effective 10-12-59 to 4-11-60; five learners (seamless).

**Knitted Wear Industry Learner Regulations** (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Beltex Corp., 106 South Main Street, Belmont, N.C.; effective 10-12-59 to 10-11-60; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' knitted underwear).

Lacy Manufacturing Co., Inc., 901 Adele Street, Martinsville, Va.; effective 10-8-59 to 10-7-60; five learners engaged in the manufacture of men's and boys' swim trunks for normal labor turnover purposes.

Sylvester Textile Corp., Sylvester, Ga.; effective 10-8-59 to 4-7-60; 10 learners for plant expansion purposes (ladies' and children's underwear of knitted fabric).

**Shoe Industry Learner Regulations** (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Florida Shoe Manufacturing Corp., Chipley, Fla.; effective 10-9-59 to 10-8-60; 10 learners for normal labor turnover purposes (leather shoes).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

Dust Proof Mattress Cover Co., Inc., Ellwood City, Pa.; effective 10-22-59 to 4-21-60; five learners for normal labor turnover purposes to be employed in the manufacture of quilted bedspreads only, in the occupation of sewing machine operator for a learning period of 320 hours at the rate of 85 cents an hour.

Hart Schaffner & Marx, 728 West Jackson Boulevard, Chicago, Ill.; effective 10-8-59 to 4-7-60; 3 percent of the total number of factory production workers for normal labor turnover purposes in the production of men's and boys' clothing only, in the occupations of sewing machine operator, final presser, hand sewer, finishing operations involving hand sewing each for a learning period of 480 hours at the rates of 90 cents an hour for the first 280 hours and not less than 95 cents an hour for the remaining 200 hours.

Palm Beach Co., Roanoke, Ala.; effective 10-10-59 to 4-9-60; 5 percent of the total number of factory production workers for normal labor turnover purposes in the occupations of sewing machine operator, final presser, hand sewer and finishing operations involving hand sewing each for a learning period of 480 hours at the rates of 90 cents an hour for the first 280 hours and not less than 95 cents an hour for the remaining 200 hours (men's Palm Beach suits).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Alfredo Manufacturing Corp., Rio Grande, P.R.; effective 9-22-59 to 9-21-60; 10 learners for normal labor turnover purposes in the occupations of sewing machine operators, final pressers each for a learning period of 480 hours at the rates of 54 cents an hour for the first 240 hours and 63 cents an hour for the remaining 240 hours (men's cotton pajamas).

Angela Manufacturing Co., Inc., Guayama, P.R.; effective 10-1-59 to 3-31-60; 140 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 320 hours and 70 cents an hour for the remaining 160 hours; (2) final inspection of fully assembled garment for a learning period of 160 hours at the rate of 60 cents an hour (brassieres).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at sub-minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced work-

ers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 14th day of October 1959.

ROBERT G. GRONEWALD,  
Authorized Representative  
of the Administrator.

[F.R. Doc. 59-8948; Filed, Oct. 22, 1959;  
8:46 a.m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 20, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 35767: *Liquefied petroleum gas—Weeks, La., to southern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7664), for interested rail carriers. Rates on liquefied petroleum gas, tank-car loads from Weeks, La., to destination in southern territory.

Grounds for relief: Market competition with other nearby producing points to same destinations.

Tariffs: Supplement 218 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4118. Supplement 4 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4334.

FSA No. 35768: *Petroleum and products—Mocane, Okla., to southern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7665), for interested rail carriers. Rates on natural gasoline, tank-car loads, and liquefied petroleum gas, tank-car loads from Mocane, Okla., to points in southern territory including Mississippi River crossings, Memphis, Tenn., and south.

Grounds for relief: Market competition at destinations with other nearby producing points.

Tariffs: Supplement 96 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4172. Supplement 218 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4118. Supplement 4 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4334.

FSA No. 35769: *Gasoline—Mocane, Okla., to southwestern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7666), for interested rail car-

riers. Rates on natural gasoline, tank-car loads from Mocane, Okla., to destinations in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Grounds for relief: Market competition at destinations with other nearby producing points.

Tariffs: Supplement 252 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4086. Supplement 149 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4102. Supplement 56 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4154.

FSA No. 35770: *Asphalt—Southwestern points to Memphis, Tenn.* Filed by Southwestern Freight Bureau, Agent (No. B-7667), for interested rail carriers. Rates on asphalt (asphaltum), natural, by-product of petroleum, liquid (other than paint, stain or varnish), tank-car loads from specified points in Arkansas, Kansas, Louisiana, Oklahoma and Texas to Memphis, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 96 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4172.

FSA No. 35771: *Vegetables and fruits—Florida points to western points.* Filed by O. W. South, Jr., Agent (SFA No. A3854), for interested rail carriers. Rates on vegetables, fresh or green (not cold-packed nor frozen), and fresh fruits (not cold-packed nor frozen), straight or mixed carloads in refrigerator cars from Florida producing points, as more fully described in the application to points in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, as described in the application.

Grounds for relief: Short-line distance formula, grouping, motor-truck competition, and application of rates through higher-rated intermediate territories.

Tariff: Supplement 48 to Southern Freight Association, Agent, tariff I.C.C. 1629.

FSA No. 35772: *Lime from points in Virginia to points in Florida.* Filed by O. W. South, Jr., Agent (SFA No. A3855), for interested rail carriers. Rates on lime, common, hydrated, quick or slack, carloads, as more fully described in the application from Ripplemead, Riverton, Staunton, and Tazewell, Va., and points grouped with and taking same rates to Agricola, Brewster, Okeelanta, and Pierce, Fla.

Grounds for relief: Short-line distance formula, grouping, different bases of rates.

Tariff: Supplement 120 to Southern Freight Association, Agent, tariff I.C.C. 1345.

FSA No. 35773: *Substituted service—CRI&P for Yellow Transit Freight Lines, Inc.* Filed by Midwest Motor Freight Bureau, Agent (No. 195), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between St. Louis, Mo., on the one hand, and Dallas or Houston, Tex., on the other, on traffic originating at or destined to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 112 to Midwest Motor Freight Bureau, Agent, tariff MF-I.C.C. 223.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 59-8946; Filed, Oct. 22, 1959;  
8:46 a.m.]

[Notice 207]

### MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 20, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62325. By order of October 15, 1959, the Commission, Division 4, acting as an Appellate Division, approved the transfer to Whitescarver Transportation Corp., Orange, N.J., of the operating rights in Permits Nos. MC 38791, MC 38791 Sub 1, MC 38791 Sub 2, MC 38791 Sub 3, MC 38791 Sub 4, MC 38791 Sub 9, MC 38791 Sub 13, MC 38791 Sub 17, MC 38791 Sub 19, and MC 38791 Sub 22, issued August 16, 1943, as amended, August 5, 1939, as amended, August 11, 1939, as amended, April 27, 1940, as amended, March 28, 1942, as amended, November 20, 1947, May 6, 1955, October 24, 1956, May 20, 1958, and June 4, 1959, to Tuohy Trucking Corporation, authorizing the transportation of groceries and such merchandise and fixtures as are used in the operation of chain grocery stores, such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies, used in the conduct of such business, soap, soap powders, soap products, shortenings, edible oils, toilet preparations, glycerine, washing compounds, and cleansing compounds, in containers, and advertising matter and premiums in connection therewith, from and to specified points in New York, Connecticut, New Jersey, and Pennsylvania. Edward F. Bowes, 1060 Broad Street, Newark 2, N.J., for applicants.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 59-8947; Filed, Oct. 22, 1959;  
8:46 a.m.]

## CUMULATIVE CODIFICATION GUIDE—OCTOBER

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